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Sup Ct
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA,
INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 23, 1940.

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1a

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

FASHION ORIGINATORS GUILD OF AMERICA,
INC., MICHIGAN AVENUE GUILD OF
CHICAGO, MINNEAPOLIS FASHION GUILD,
LADIES' READY TO WEAR GUILD OF
BALTIMORE, INC., NATIONAL FEDERATION
OF TEXTILES, INC., and their re-
spective officers, directors and mem-
bers, et al.,

Petitioners,

against

FEDERAL TRADE COMMISSION,
Respondent.

2a

PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE FEDERAL TRADE COMMISSION.

*To the Honorable Judges of the United States Circuit
Court of Appeals for the Second Circuit:*

3a

COMES NOW, the FASHION ORIGINATORS GUILD OF AMERICA, INC., on behalf of itself and of each of its officers and of each member of its Board of Governors and the respective successors of each of the foregoing and on behalf of each member of the Fashion Originators Guild of America, Inc., and the officers of each of its members, and on behalf of all other respondents against whom a certain cease and desist order has been directed as herein

4a

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more fully set forth, all with the same force and effect as if all of said respondents were specifically herein named, and petitions this Honorable Court to review and set aside as to all of the respondents in this proceeding the findings, conclusions and order of the Federal Trade Commission, all entered the 3th day of February, 1939, requiring your petitioner and said respondents to cease and desist from alleged violations of the Federal Trade Commission Act, and likewise come all of the aforementioned respondents and join in this petition for review and appeal as aforesaid.

5a

In support of the petition, the following is shown to this Honorable Court:

I.

6a

That your petitioner, Fashion. Originators Guild of America, Inc. (hereinafter sometimes referred to as "F.O.G.A." or "Guild"), is a non-profit membership corporation organized under the laws of the State of New York. It maintains its principal office at 512 Seventh Avenue, New York City. Its members are manufacturers of ladies' ready-to-wear garments and are enumerated in the aforesaid order of the Federal Trade Commission dated February 8, 1939. Approximately 12,000 retailers of ladies' ready-to-wear garments co-operate with the Guild in the program against which the aforesaid cease and desist order is directed. Your petitioner seeks review on behalf of itself and on behalf of all those against whom said order is directed, all of whom join in this petition and seek the same relief.

II.

Your petitioner was organized in March, 1932, for the following purpose:

"To protect the originators of fashions and styles against copying and piracy of styles of any trade or industry; to promote co-operation and friendly intercourse in the wearing apparel industry; to establish and maintain uniformity and certainty in the customs and commercial usages of trade; to acquire, preserve, and disseminate information and literature which will tend to augment the sale of the commodities manufactured or sold; to advance the trade and commercial industries of its members throughout the Americas, and to promote the sale, identification and recognition of original style and merchandise of the industries of its members."

8a

Your petitioner was organized solely to ameliorate evils in the dress industry, the most important of which, style piracy, was destroying the industry by ruining manufacturers, injuring retailers, oppressing labor and destroying consumer confidence. Its efforts to ameliorate these evils have been judicially sanctioned whenever challenged.

In the following cases the purposes and methods of operation of the Guild and the entire legality of both are best discussed:

William Filene's Sons & Co. v. Fashion Originators Guild of America, 90 Fed. (2d) 556 (C. C. A., 1st Cir.);

9a

Wolfenstein v. Fashion Originators Guild of America, 244 App. Div. 656 (New York).

III.

(1) Despite judicial sanction by state and federal courts (original and appellate jurisdictions), the Federal Trade Commission (hereinafter referred to as "Commis-

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sion") on April 16, 1936, issued its complaint (Docket No. 2769) charging the Guild and its members with the use of unfair methods of competition in commerce in violation of *Section 5 of the Federal Trade Commission Act*.

Stripped to its essentials, the complaint charges the respondents with conspiring to establish a monopoly in the manufacture and sale of ladies' ready-to-wear garments; that in furtherance thereof, members of the Guild refused to sell their dresses to retailers who refused to co-operate with the F.O.G.A. program against style piracy and that retailers, co-operating with F.O.G.A., have agreed not to purchase dresses from manufacturers whose dresses have been copied from designs originated by members of F.O.G.A.

11a

(2) Commission's attorneys urged and the Commission has held that the efforts of the members of the F.O.G.A. to save themselves from destruction by refusal to sell to those insisting upon their right to deal and dealing in pirated merchandise of F.O.G.A. members constitutes an illegal boycott *per se*; that it is immaterial that the members of F.O.G.A., and those co-operating with its program, seek to engage in no boycott but are merely adopting preventive measures to protect their business from being destroyed.

12a

The Commission has held that regardless of how proper, reasonable or necessary the action complained of may be, if as an incident to it a restraint or boycott arises, such action is illegal.

In conformity with this theory, the Commission refused to permit F.O.G.A. to offer any evidence of the history and condition of the industry at the time of the institution of the program, of the purposes sought to be accomplished thereby, of the reasonableness of the restraint imposed and of the fairness of its execution.

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(3) The F.O.G.A., and all respondents, have answered the complaint by urging that the program cannot be declared illegal by reason of the fact that as a result of a proper effort to save the industry from destruction some restraints follow.

Petitioner contends that factually its program is legal in that:

(a) It was adopted for the purpose of eliminating evils which were ruining the dress industry; the most vicious of which was style piracy;

(b) It was voluntarily entered into by manufacturers and retailers;

14a

(c) It was a reasonable program suited to accomplish the ends sought;

(d) It has been fairly and justly administered;

(e) Its purpose was not to create a monopoly or a boycott, and, in effect, it does neither.

IV.

Although the Commission allowed its attorneys the widest latitude in introducing any and all matters into evidence petitioner was limited in its attempts to establish the facts to a degree that amounted to a denial of due process.

15a

There have been three examiners successively appointed by the Commission; the last examiner to hear evidence heard only 329 pages of the 8,418 pages of testimony, and thereupon filed his report upon the facts.

Pursuant to the Rules of Practice of the said Commission, exceptions to the said report were duly filed.

V.

On the 8th day of February, 1939, the Commission made Findings of Fact and Conclusions herein and issued its order requiring your petitioner and such co-respondents to cease and desist from the practices constituting its efforts to free the industry of evils upon the alleged ground that the practices were violative of Section 5 of the Federal Trade Commission Act.

VI.

17a Such order requires the abandonment in its entirety of the program of the Guild, although the same has been judicially sanctioned by the Circuit Court of Appeals for the First Circuit, and all Courts of the State of New York, in which such program has been challenged.

This program, as passed upon by said Courts, is substantially as follows:

18a Dress manufacturers are divided into two classes, those who originate their own designs at considerable expense (originators) and those who unethically appropriate the designs of originators (style pirates). There are five seasons a year in the dress industry and an originator incurs an expense of thousands of dollars each season to produce a group of dresses (originals) from which the more desirable are selected as a so-called "sample line" for display to prospective retail buyers. A retail buyer purchases only a small number of dresses of any one design as his first purchase (to test its consumer acceptance, i. e., will it sell) and thereafter, if a particular dress is successful, he will reorder it. The success of the originator's business depends entirely upon his receiving reorders. The original orders cannot support a dress business. (Aside from those other evils incident to style piracy, it completely destroys the *originator's* ability to obtain a reorder.)

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19a

In this industry the term "style" refers to the general characteristics of the dress, which particular characteristics differentiate it from what has previously been worn, such as the length of skirt, size and shape of sleeves, height of waist, and so forth. A "design" includes all of the details involved in the makeup of a dress and is the designer's individual interpretation of a "style".

The industry recognizes that a single "style" may be developed into almost any number of different "designs". Originators send their designers to the style centers of the world, of which Paris is the principal one, to observe the *prevailing styles* and their trend and to obtain inspiration for their new *designs*. Upon observing the current style trends, these designers interpret the same in their own designs, each according to his own conception thereof and pursuant to the interpretation of the tastes and requirements of his own customers. Designs thus prepared are recognized as original creations in the industry, even though they may not be novel in the sense that nothing like them has ever existed before.

20a

The "style pirate" does not send designers to Paris, and thus avoids this heavy expense involved in the preparation of original designs. He does not design "a line" (an expensive and hazardous, but necessary, procedure) from which are selected the best as his sample line and the rest deemed a total loss. He just pirates or steals the best the originator has made after it has been proven at the originator's expense. Pirating is accomplished in different ways, all either larcenous, fraudulent, evil, vicious or unethical. Sometimes employees of pirates, fraudulently misrepresenting their purpose, visit originators' showrooms and memorize or surreptitiously take notes of the details of his designs; sometimes pirates buy sketches or photographs of successful designs from those who by bribes succeeded in prostituting the originator's employees; sometimes the details are obtained through direct bribery

21a

22a

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of the employees of the originator, other times through actual burglary, theft or fraud.

The effect of style piracy is readily observable and understood. Pirates, by avoiding the expense of producing a line of original designs and by using cheaper materials and by sweating labor thus obtain for themselves the fruit of the originator's investment, expense, hazard and genius. This competition is further made even more vicious by the pirate palming off his inferior copy as identical with or as being in fact the original design. What this does to the originator need not further be explained.

23a

Additionally, such piracy destroys the style life of a dress, i. e., the period during which it may be sold. Since the style life of a dress does not exceed at a maximum approximately three months, within a short time after their production the style life of originals is completely destroyed by the pirate, since the originality of his design quickly loses its appeal to the purchasing public by the prevalence of copies. An additional evil resulting from this is that the originator is not able to anticipate or plan for steady reorders and cannot regulate his production accordingly.

24a

Style piracy was likewise destroying the business of the retailer. One of the principal assets of a retailer of ladies' ready-to-wear is its reputation for style, service, honesty and fair dealing, i. e., its good will. This is destroyed when a customer sees what *appear* to be the same dresses on sale at other stores at a lower price, for she then feels that she has been overcharged and taken advantage of by the store in which she purchased her dress, being attracted solely by eye appeal and not recognizing the inferior materials and workmanship in the copy. This also resulted in great and unwarranted returns. In turn, it tremendously increased the retailers' "mark-downs", since the appearance of a copy immediately destroyed the value of the original. It also prevented the retailer from carrying a

balanced or complete stock through his fear of the destruction of the value of his stock by the appearance of pirated copies. (This reaction has its effect upon the pirate himself, for pirating is done progressively lower and lower until it becomes a question merely as to which pirate can sweat his labor more, the competition here being on price.)

The effect of style piracy on labor is vicious. It is the greatest contributing cause to the sweating of labor. The copyist can only compete on a price basis, since he does not offer origination of design or quality in workmanship and in materials. This has resulted in the pirate demanding that contractors bid for his work, a destructive practice, wherein the price can only be reduced at the expense of labor. Not only are wages thus forced to a low level when workers are employed, but the hazards of the seasonal nature of the business are increased by the inability to steadily employ labor due to the impossibility of expecting reorders.

26a

The ultimate consumer has likewise been affected by style piracy. The retailer, anticipating price competition by the pirate and the necessity of taking back dresses which have been sold, must raise the initial price of his original creation in order to eventually make a profit.

It is elementary that woman has always regarded as the principal element of value in clothes a degree of exclusiveness and individuality commensurate with the price paid, and this prime element demanded by women in shopping for clothes is destroyed by style piracy; as a concomitant, the consumer was helplessly confused in her attempt to adequately measure the quality of dresses and their value by reason of the prevalence of so many copies of what she deemed good.

27a

This brief description of the evil of style piracy and its effect has been judicially recognized and defined in the *Filene's* case, *supra*, and it is clear therefrom that style piracy was ruinously injurious to manufacturer, retailer

28a

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29a

and labor in the dress industry and had a deleterious effect upon the customer. The manufacturer was being forced out of business due to the great expense involved in and his inability to preserve and maintain the integrity of his product. Retailers were being forced out of business or were faced with the alternative of discontinuing their dress departments due to inability to maintain a balanced stock, and the impossibility of relying upon the sale of their garments due to the palming off of their merchandise, aided by the whispering campaign, "This is the identical dress which you saw selling for twice this price." Labor was adversely affected by the inability of the manufacturer to maintain a steady course of production even during the season, which resulted not only in loss of work but disastrous strikes during the season.

With manufacturers, retailers, labor and consumer panic-stricken, outraged, rebellious and disgusted, with the industry slowly disintegrating by failure after failure, the dire emergency which faced the industry resulted in the formulation of the F.O.G.A. *Its most important purpose was to legally and reasonably attempt to cure or ameliorate this evil.*

That style piracy was and is an evil is admitted.

The program of the Guild is carried out in the following manner:

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Manufacturers who are members of the Guild have agreed not to sell their original creations to retailers who wilfully buy and sell pirated copies of their original designs. The sole purpose of this action is to protect the members' merchandise. If such retailer does not wish to deal in original merchandise the Guild has no concern with and does not attempt to prevent his free dealing in copies. Its members refuse to do business with those who are destroying them and their industry.

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To ascertain the policy of the retailer he is requested to signify that it is his policy to refrain from wilfully purchasing pirated copies of original merchandise. This is usually done by the retailer signing a "declaration of co-operation" prepared by the Guild, or, *if a retailer so desires, any informal declaration incorporating the substance of the foregoing policy.*

For the purpose of having some record of what is claimed to be an original design, the Guild established a Design Registration Bureau. This Design Registration Bureau only fixes the time of *claim to origination* and is no proof of origination. *Registration confers no rights and does not even raise a presumption of originality. This must be determined in the event of a dispute by arbitrators as hereinafter described.*

32a

The question of whether a particular dress is a pirated copy of an origination is determined by a system of impartial arbitration. The arbitrators are selected in rotation from lists submitted by co-operating retail stores and buying offices (*no manufacturer or member of the Guild sits as an arbitrator*), the arbitrators rotating in such manner that they sit on a particular day without knowing what disputes are to appear before them on that day.

A non-Guild manufacturer, whose dress is involved in a piracy dispute, is invited to appear before the arbitrators and present such evidence as he sees fit. No decision is rendered unless both the alleged original and the alleged pirated copy are before the arbitrators. Upon objection with or without cause by a non-member (a Guild member may not object) to the personnel of the arbitrators, he is "ipso facto" granted a new panel consisting of the next three persons on the rotating list. If he objects to this second panel he may then select any person he desires as his arbitrator, the Guild manufacturer selects another person and these two select a third. The Guild manufacturer is bound by the decision of the arbitrators, but the

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non-member of the Guild may appeal to a so-called "Executive Piracy Committee", consisting of merchandising men or heads of New York buying offices. A slightly different but substantially similar and fair method of determining the question of piracy is followed in cities outside the New York area.

When a dress has been *adjudged* as having been pirated *and not before*, a description thereof is sent to employees of the Guild who are known as "shoppers". Their duty is to point out these dresses which have been adjudged copies to a co-operating retailer who may have them in stock, whose duty it then is to withdraw them from sale. These shoppers are known to the retailers in the respective cities in which they work and they work in co-operation with the retailers. The functions of the shopper are openly performed; there is no spying, nothing secretive or furtive.

If a retailer desires to purchase merchandise from a member of the Guild, and pursuant to a request then made refuses to signify that it is his policy not to deal in copies, or having so signified thereafter wilfully and continually sells pirated copies of Guild merchandise, his policy is thereafter communicated to the members of the Guild. All members have a card index system which advises them of the policy of the retail stores with whom they do business. When a retailer makes known that he intends to deal in pirated merchandise, a red card is issued to the members of the Guild which advises them of such policy. *It is the election on the part of the retailer preferring to sell pirated merchandise rather than originals that initiates the red card by the Guild and informs the members of the Guild that the retailer does not wish to buy Guild merchandise.* The refusal to sell by members of the Guild is not the result of the red card, but results from the definite, unequivocal and self-expressed refusal of the retailer to protect the manufacturer's business from the evil of style piracy.

Even though a retailer may have been red-carded, the red card is immediately withdrawn and the members of the Guild gladly sell him their merchandise at any time that such retailer signifies his policy to aid in the eradication of style piracy refusing to deal in pirated merchandise.

Subsequently, the Guild adopted additional policies dealing with those additional conditions which had theretofore constituted an evil, such as apartment house shops (sometimes called bootleg shops), excessive discounts, fashion shows, subsidized retail advertising and unwarranted returns.

This program of the Guild has been completely sustained as legal, valid, fair and a reasonable regulation of trade by the United States Circuit Court of Appeals in the case of William Filene's Sons & Co. v. Fashion Originators Guild of America, 90 Fed. (2d) 556, and by the Supreme Court of the State of New York in Wolfenstein v. Fashion Originators Guild of America, 244 App. Div. 656.

38a

VII.

(A) The following findings of fact of the Federal Trade Commission are excepted to for the reason that they are contrary to the credible evidence in the record, are not supported by evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred and because petitioner was not permitted to introduce evidence upon the matters thus found:

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1. All of paragraph "Eight".
2. That part of paragraph "Ten". thereof commencing:

"Each of these ^{on} Guilds entered into an agreement with the F.O.G.A."

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to and including

"The terms of these agreements were fulfilled by the F.O.G.A. and its members, and by the respective local guilds and their members."

3. That part of paragraph "Eleven" which finds:

"And return such garments as are adjudged to be copies of the Guild's registered styles."

and to the interpretation in such paragraph of the contents of the declaration of co-operation.

41a

4. That part of paragraph "Eleven" which finds:

"At first the F.O.G.A. attempted to secure the voluntary co-operation of the retailers and their signatures to the declaration of co-operation by representing the advantages to be derived from such co-operation; later, after having secured a number of voluntary signatures to this 'declaration' the F.O.G.A. coerced, constrained and compelled retail dealers to sign such declarations of co-operation under the threat that unless they did so its members would refuse to sell them their products or to allow them to inspect their lines of merchandise. The garment manufacturing members of the F.O.G.A. have refused to exhibit or sell their merchandise to retailers who fail or refuse to sign said declarations of co-operation or who having signed same fail to comply with the requirements thereof."

42a

5. So much of paragraph "Eleven" as finds that whether or not a dress is a pirated copy of an original registered style of a member of the F.O.G.A. is determined by the F.O.G.A.

6. That part of paragraph "Eleven" which finds:

"The majority of 12,000 retail dealers in women's garments referred to in paragraph 'Six' hereof

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signed such declaration of co-operation as a result of the threat of the F.O.G.A. that its members would sell their products only to those merchants who signed the declaration of co-operation."

7. That part of paragraph "Eleven" which finds:

"The respondent, F.O.G.A., after it had secured the co-operation of a large number of retail dealers sought to and did induce many retailers not only to refuse to purchase alleged copies of original designs of its members, but also to refuse to purchase any of their requirements from manufacturers who copied original styles or designs of members of the F.O.G.A."

8. That part of paragraph "Thirteen" which finds:

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"The F.O.G.A. from time to time appoints what it designates as a piracy committee."

9. That part of paragraph "Fourteen" which finds:

"These shoppers also visit the stores of non-co-operating retail dealers without disclosing their identity for the purpose of ascertaining whether such merchants have on sale copies of alleged original designs and styles of F.O.G.A. members and if such are found it is reported to the F.O.G.A."

10. That part of paragraph "Fifteen" which finds:

"The F.O.G.A. has also red-carded retailers who refuse to disclose the name of the manufacturer from whom they purchase alleged copies even though such retailers remove the alleged copies from sale."

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11. All of paragraph "Sixteen".

12. All of paragraph "Seventeen".

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13. All of paragraph "Eighteen".
14. All of paragraph "Twenty-four".
15. All of paragraph "Twenty-five".
16. That part of paragraph "Twenty-eight" which finds that retail dealers

"Have been occasioned loss of good will and great financial loss by the refusal of garment manufacturing members of the F.O.G.A. to sell them their merchandise."

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17. All of paragraph "Twenty-nine".
18. All of paragraph "Thirty".
19. The following subdivisions of paragraph "Thirty-one", to wit, "a", "b", "c", "d", "e", "f", "g", "h", "i", "j", "k", "l", "m", "n", "o", and "p" and to so much of paragraph "Thirty-one" as infers that action is taken by the Guild as distinguished from its members who together with co-operating retailers dictate the policies and functions of the Guild.

48a

(B) Petitioner excepts to the Conclusion of the Federal Trade Commission upon the ground that it is unsupported by the evidence, contrary to the credible evidence because it is not supported by evidence in the record affording a substantial basis of fact from which this conclusion can be reasonably drawn and because such conclusion is contrary to law.

VIII.

Exception is taken to the failure of the Commission to find as follows:

- (a) The purposes for which the said Fashion Originators Guild of America, Inc., was formed are as follows:

"To protect the originators of fashions and styles against copying and piracy of styles of any trade or industry; to promote co-operation and friendly intercourse in the wearing apparel industries; to establish and maintain uniformity and certainty in the customs and commercial usages of trade; to acquire, preserve and disseminate information and literature which will tend to augment the sale of the commodities manufactured or sold; to advance the trade and commercial industries of its members throughout the Americas and to promote the sale, identification and recognition of original style and merchandise of the industries of its members" (Commission's Exhibit 1, Respondent's Exhibit 98). 50a

- (b) The Guild initiated its campaign against design copying or "style piracy" with the passage of a resolution on June 12, 1933, reading as follows:

"WHEREAS, the chaotic conditions in the dress industry are largely attributable to widespread and persistent piracy of style and

WHEREAS, unless this regrettable situation has been particularly injurious to the best interests of the retailers and manufacturers of quality merchandise and 51a

WHEREAS, unless immediate and effective efforts to obtain protection against this plagiarism are instituted, the producers and distributors of better grade clothes will lose the excellent opportunity that will be held forth this Fall for reviving trade and consumer interest in style and quality apparel, therefore be it

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RESOLVED that, in order to protect the property rights as embodied in their originations, the members of the Fashion Originators' Guild of America, beginning with the opening of their Fall lines on and after July 5, 1933, limit the showing and sale of their merchandise solely to retailers who will co-operate in protecting these property rights by refraining from purchasing or marketing or dealing in any way in garments that are copies of models created by Guild houses" (Commission's Exhibit 99-B).

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(c) Copies of this resolution were sent to retail stores together with a letter dated June 16, 1933 (Commission's Exhibit 99-A), explaining the anti-piracy program, and the retail stores were requested to indicate their policy with regard to the protection of original designs of Guild members (Commission's Exhibits 3-A to 3-G, 455, 456, 480, 534).

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(d) Thereafter the Guild from time to time sent to retailers generally numerous form letters explaining the proposed program of the Guild, and did from time to time request retailers to state their opinion concerning the program, the value thereof to the industry generally, and to retailers in particular. The said Guild did further from time to time send various committees and representatives around the country to confer with retailers to ascertain the manner and method of curing the many evils that beset the ladies' dress industry. At all times the Guild consulted with retailers in an effort to mold the programs to the retailers' needs, as well as to the needs and protection of the manufacturer (Commission's Exhibits 99, 371, 372, 373, 374, 382, 451, 454, 455, 568; Respondent's Exhibits 12-D).

(e) The form of Declaration of Co-operation as methods and procedures crystallized changed in many respects, but

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substantially the basic form continued (Commission's Exhibits 3-A to 3-G, 455, 456, 480, 534). No particular form of declaration has even been insisted upon (Respondent's Exhibits 100-102).

(f) Ethical retailers welcomed the plan proposed by the Guild and sought conferences with representatives of the Guild in an effort to co-operate in eradicating the evil of style piracy aforesaid. Thereafter, conferences ensued, questionnaires were sent to retailers, and the program of the Guild developed after and pursuant to suggestions requested of retailers. At no time did the Guild act arbitrarily and without due regard to the rights of retailers generally in the United States.

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(g) In July, 1933, there was established a Design Registration Bureau within the Guild. Original designs created by members or affiliates of the Guild are sketched on registration forms upon which are also written detailed descriptions of the garments. The registrant makes affidavit that the garment to be registered is an original design created by him. The form is then stamped and numbered by the Guild, which retains the portion bearing the description and returns the sketch to the manufacturers. Its only function is to record the fact that the registrant *claims* that the particular design is his original creation, and the date on which such claim is first made.

(h) In the early part of 1935, the Association of Buying Offices, which represents approximately 1,700 retail stores, requested the Guild to extend its style protection program to cheaper merchandise. Such requests were in form of letters in evidence signed by H. O. Bergdahl, an officer of the Association of Buying Offices, who is also the director of the Associated Merchandising Corporation, the New York purchasing agent for Filene's and R. H. White and other witnesses. The Guild decided to take no action

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pending further inquiry regarding the sentiment among retailers generally. After investigation which included a trip around the principal centers of the country gathering the sentiment of retailers, it was concluded that the retailers wished that style protection be extended throughout all price ranges. Consequently, in July, 1935, a number of manufacturers in the price ranges from \$10.75 to \$16.75 were admitted as "protective affiliates" of the Guild. Protective affiliates differ from members in that they participate only in the style protection program and are not concerned with activities of the Guild in other fields.

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(i) In September or October of 1935, a representative of the Associated Merchandising Corporation suggested that manufacturers in the price ranges below \$10.75 be taken into the Guild. Communications were received from retailers requesting that the program of protection be extended downward to include the \$6.75 manufacturers. Conferences were held with representatives of the Associated Merchandising Corporation and the Association of Buying Offices, who urged that the lower price ranges be included in the program, and in November, 1935, a group of \$8.75, \$7.75 and \$6.75 manufacturers were taken in as protective affiliates of the Guild.

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(j) The plan whereby the Guild attempts to prevent the pirating of original designs contemplates that members and affiliates of the Guild shall not sell their merchandise to retailers whose policy it is to deal in pirated copies of the original creations of members or affiliates. The applicable regulation of the Guild is as follows:

"Members shall neither show nor sell their garments to retailers:

(1) who have not signed and/or agreed to the 'Declaration of Co-operation' with the Guild; or

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(2) having so signed and/or agreed, have been found by the Board of Governors of the Guild to have breached its terms" (Commission's Exhibit 1).

(k) In practice, the Guild has never insisted that the retailer sign any particular form of declaration of policy. Members and affiliates have always been permitted to sell to retailers who preferred not to sign the Guild form of declaration but who indicated in any other form that it was their policy not to deal in copies of garments originated by Guild manufacturers. Strawbridge & Clothier, William Filene & Sons, R. H. White Company, B. Forman's and numerous other stores members of the Associated Merchandising Corporation chose to write their own form of letter of co-operation. John Wanamaker merely sent the Guild a printed booklet which set forth the aims and mercantile policies of the founder of the store, which included a statement to the effect that the store did not countenance the copying of styles and designs, with a covering letter stating that the policy set forth in the said printed booklet was still the policy of the store, and likewise numerous other retailers chose to state that they would co-operate with the Fashion Originators Guild of America in its fight against the evil of style piracy, without using the so-called "Declaration of Co-operation" (Respondent's Exhibits 100-102).

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(1) Prior to the summer of 1935 approximately 6,000 retail stores had voluntarily indicated that their policy was not to deal in pirated copies of garments originated by Guild manufacturers. In the summer of 1935, a revised form of "Declaration of Co-operation" was adopted by the Guild for use by such retailers as might wish to join in the anti-piracy program. The revised form was signed by approximately 6,000 additional retailers, so that by the end of 1935 approximately 12,000 retailers voluntarily had

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evidenced their desire to co-operate with the Guild. A retailer signing the revised form of Declaration of Co-operation represented that it was not his policy to wilfully buy pirated copies of merchandise created by members or protective affiliates of the Guild (Commission's Exhibits 3-A to 6, 455, 456, 480, 534).

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(m) Prior to the fall of 1935 the Guild had established no uniform procedure for determining whether garments alleged to be pirated copies of original creations of Guild manufacturers were in fact copies. In the fall of 1935 a uniform plan was evolved and codified by resolution of the Board of Governors of the Guild. The operation of this plan, as applied to piracy disputes between Guild and non-Guild manufacturers, is as follows: Co-operating retail stores and retail buying offices in New York were requested to submit names of their employees who were considered qualified to act as arbitrators in piracy disputes. All names thus submitted to the Guild were placed on a list or panel, which was divided into categories according to the particular qualifications of the individuals as stated by the organizations submitting their names. Thus there is a group of persons particularly qualified in the field of lower priced garments, another qualified in medium priced goods, another in better goods, another in sportswear, and so forth. The panel has included as many as 200 individuals, although the number varies from time to time. Three individuals on the panel, selected in regular rotation, are notified a week in advance to act as arbitrators on a certain day to decide such cases as may come up on that day. The purpose is to secure an absolutely impartial committee. Each complaint is treated separately, and upon the visible appearance of the style presented. No decision is rendered unless both the alleged original and the alleged pirated copy are before the arbitration. The arbitrators decide by majority vote, and their

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decision is binding upon the Guild manufacturer. Due notice is given the non-Guild manufacturer in order that he may attend the meeting of the committee and present evidence in support of his contention that the challenged garment is not a pirated copy of the alleged original, or that the latter is not in fact an original creation of the Guild manufacturer.

Should the non-Guild manufacturer object, with or without cause, to the personnel of the particular Board of Arbitration before which his case is brought, he may request another set of arbitrators to consist of the next three individuals whose names appear in order upon the rotating panel, and the hearing is adjourned until the following day. If the non-Guild member objects to the personnel of the new Board of Arbitrators he may select any individual as his arbitrator, the Guild manufacturer selects another, and those two select a third. The majority decision of the Arbitrators thus chosen is binding upon the Guild manufacturer. He may not appeal therefrom. In order that every reasonable opportunity may be given the non-Guild manufacturer to establish his claim, he may appeal from an adverse decision of the Board of Arbitrators to an Executive Piracy Committee consisting of merchandise men or heads of New York buying offices.

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(n) If the alleged style pirate is located in a city other than New York and is unwilling to appear in New York or to have his New York representative appear in his behalf, or if the retail stores immediately involved in the controversy are located in a city other than New York, the dispute may be submitted to a committee convened in the city where the manufacturer or the retailers, as the case may be, are located. The method of convening such a committee depends upon local practice. Usually a method has been formulated by a local retail organization; otherwise a committee of disinterested retailers is con-

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vened by the Guild's shopper. The decision of such local committee is binding only upon stores in the particular city. The dispute is passed upon by a New York committee under the standard method of procedure before any decision is circulated throughout the country.

(o) If a non-Guild manufacturer who has failed for any reason to appear before a committee to present evidence in support of his claim subsequently desires a hearing, the case is reopened and he may appear before a retail committee, an executive piracy committee, an arbitration committee or any other impartial body that may be suggested.

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(p) Piracy complaints are not initiated by the Guild or its shoppers. They are initiated by retailers who believe that some competitor is carrying a pirated copy of an original creation stocked by the complainant. Shoppers are not spies but are known to retailers and help locate dresses which have been *adjudged* copies.

(q) A non-Guild manufacturer who believes that a Guild manufacturer has copied one of his original creations may present his complaint to the Guild. If the decision is in favor of the non-Guild manufacturer, the Guild manufacturer is required to remove the copy from his collection and recall the dresses that have been shipped to retailers.

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(r) No protection is accorded by the Guild to copies of imported garments or to any other garment that cannot fairly be regarded as an original creation of the manufacturer claiming protection. Copies of imports are not eligible for registration. If a garment registered by a Guild manufacturer is subsequently found to be a copy of an import, the registration is cancelled.

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(s) A card index system is maintained by the Guild to keep its members advised as to the policy of retail stores regarding the sale of pirated originations. If a retailer desiring to purchase from a Guild manufacturer declines to state his policy to be to protect the original creations of Guild manufacturers, a blue card is issued requesting discussion of the matter before selling the putative customer. If the retailer indicates affirmatively that such is not his policy, or if a retailer who has been co-operating with the Guild indicates that he will no longer protect Guild merchandise against style piracy, members are notified by means of a red card. It is the practice of the Guild not to "red-card" a retailer until it clearly appears that the retailer does not intend to protect Guild merchandise against style piracy. If a retailer refuses or fails to discontinue the sale of garments found to be pirated, the Guild communicates with the management of the store and with its New York office, if any, to determine whether the particular incident reflects a change of policy on the part of the store or is merely an isolated instance attributable to peculiar circumstances or to a misunderstanding. Only after careful inquiry has disclosed that the general policy of the retailer is to deal in pirated merchandise does the Guild notify its members that the retailer is no longer co-operating. Should the retailer later change its policy to one of co-operation, the members of the Guild will again sell their merchandise to him. The refusal to sell by members of the defendant Guild is not the result of the "red-card", but results from the definite and unequivocal refusal of the retailer to protect the manufacturer's styles from the evil of style piracy in the manner set forth in the Declaration of Co-operation.

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(t) Under date of February 14, 1936, the Associated Merchandising Corporation advised the Guild by letter that in the future none of its members would protect orig-

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inal creations in price ranges below \$10.75. The Guild thereupon sent telegrams to each of the members of the Associated Merchandising Corporation asking whether the letter of February 14th correctly stated the individual store's policy. Replies in the negative were received from four stores, and no replies were received from the remainder. Accordingly, the Guild, pursuant to the unanimous vote of members present at a meeting held February 17, 1936, issued "red cards" to those members of the Associated Merchandising Corporation who had not replied to the telegram of February 15th (Respondent's Exhibits 37, 38; Commission's Exhibits 571, 840, 841).

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IX.

Exception is taken to the failure of the Commission to find as follows:

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1. That previous to the organization of the Guild an evil known as style piracy existed in the dress industry. This evil was ruinous to the manufacturer, destructive of the business of the retailer, lowered the standards of labor and confused the consumer; that the Guild was formed primarily for the salutary purpose of eliminating such evil among others and that the program and activities of the Guild were adopted and carried out for such purpose; that in the execution of its program the Guild was fair and just and not arbitrary and the means adopted were suitable to the lawful end sought to be accomplished.

2. That the refusal of the members of the Guild to sell retailers who refused to protect their merchandise from style piracy is primarily and solely for the purpose of protecting their own business from piratical and unethical assaults and is not illegal.

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79a

3. That the program of the Guild does not unreasonably restrain trade.

4. That the program and activities of the Guild do not establish or attempt to establish a monopoly in favor of its members.

5. That members of the Guild do not dominate the industry either in dollar volume or number of manufacturers in the industry.

6. That the Guild does not fix or maintain prices, control production or allocate customers.

7. That the practice of group showing and sale of merchandise by groups of manufacturers in one place at a given time from samples transported from their headquarters at the place of the showing was an evil and that the attempt of the Guild to eliminate the same was not unreasonable and was fairly administered.

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8. That the sale of ladies' ready-to-wear garments from so-called apartment house shops was an evil and that the attempt of the Guild to eliminate the same was not unreasonable and was fairly administered.

9. That the taking of unreasonable discounts was an evil and that the attempt of the Guild to eliminate the same was not unreasonable and was fairly administered.

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10. That the Guild adopted regulations addressed to its members only designed to remedy evils in the industry, which regulations are reasonable and proper and have no tendency to restrict fair competition in the industry.

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Your petitioner further excepts to the said Findings, Conclusions and Order of the said Federal Trade Commission for the reason that the constitutional right of the respondent to a fair trial by due process of law was abridged by reason of the following:

- (a) The denial to petitioner of the right to rebut testimony introduced by the Commission and admitted into evidence by the Examiner, upon which Findings were made by the Commission.
- 83a (b) The suppression of evidence by Commission's attorneys and the arbitrary, deliberate refusal to introduce evidence in their possession.
- (c) The denial to the petitioner of the right to cross-examine witnesses proffered by the Commission from whom testimony was elicited on behalf of the Commission.
- (d) The curtailment of cross-examination upon the ground that the matters sought to be elicited were not inquired about by Commission's attorneys.
- (e) The refusal to permit cross-examination upon the ground that the matters sought to be elicited were more properly the subject of testimony by petitioner in support of its own case and the subsequent refusal to permit such presentation upon proffer of proof by the petitioner.
- 84a (f) The refusal of the Examiner to permit the record to reflect: questions asked by the attorneys for the petitioner, and answers made by the witnesses to such questions; answers to questions put by the attorneys for the Commission; exceptions made by the attorneys for the petitioner to the rulings of the Examiner and the physical striking by the Examiner of questions put and answers elicited upon the hearing, together with objections made and exceptions taken by attorneys for the petitioner.

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(g) The requirement that the petitioner attend at the taking of testimony in New York, Boston, Philadelphia, Detroit, Cleveland, Chicago, Minneapolis and Baltimore in the light of the fact that within the legal philosophy propounded by the Commission, the Commission's entire case was presented within pages 134 to 147 of the record.

(h) Of 8,418 pages of testimony, the Examiner submitting the report upon which the Commission's findings are predicated presided over the taking of only 329 pages of testimony, practically all of which was taken after the conclusion of the Commission's case: the report, therefore, is in the nature of an appellate review and petitioner has been deprived of the safeguard of the personal observation of the witnesses by the previous Examiners to aid, guide and assist in the weighing of evidence. 86a

(i) The harassing, coercive, distracting tactics of the Examiner and of the Commission's attorneys and the undue interference with the conduct of the defense by the petitioner's attorneys as revealed by the fact that in approximately 3,919 pages containing cross-examination of the Commission's witnesses (inclusive of hundreds of pages of colloquy between the attorneys and the Examiner), the cross-examination by petitioner's attorneys was interrupted by objections and by gratuitous, superfluous remarks 1,404 times; of the 202 pages containing the petitioner's direct case, inclusive of colloquy between counsel and Examiner, counsel for the petitioner in the presentation of their defense were interrupted by objections and superfluous and gratuitous remarks eighty-four times. 87a

(j) The high-handed, arbitrary tactics of the Commission in striking an exception from the petitioner's Excep-

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tions to the Report of the Trial Examiner, which said exception is as follows:

"The entire proceeding is an abuse of process and a malicious prosecution in the light of the decision and opinion of the United States Circuit Court of Appeals in the case of William Filene's Sons & Co. v. Fashion Originators Guild of America. The entire proceeding was an abuse of process and malicious prosecution by reason of the previous ruling of the Federal Trade Commission upon the legality of the Guild activities and the failure of Commission's attorneys to elicit proof, or the Examiner to find that the Guild's activities had altered or changed since the aforesaid decision: Respondent's Ex. 99 for Identification."

89a

(k) The refusal of the Examiner to exclude from admission into evidence Commission's Exhibits 19, 26, 88, 116, 120, 121, 123, 125, 127, 128, 129, 131-136, 140, 357, 402, 403, 471, 472, 473, 478, 479, 481-486, 489, 490, 491, 493, 496, 497, 504-509, 522, 551, 573, 587, 588, 598, 600, 601, 602, 606, 610, 611-614, 654, 713, 714, 735, 743, 829, 843, 853, 859, 867, 880, 889, 890, 891, 906, 941, 942, 956, 980, 1004, 1008-1032 as incompetent.

(l) The refusal to admit into evidence Respondent's Exhibits 99, 100-120, 127-208 for Identification.

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(m) The refusal of the Commission to permit petitioner to adduce testimony in support of its affirmative case, and to testify as to the reason for and the fairness of the recording of affected stores with respect to which testimony had been adduced by the Commission.

(n) The refusal to permit the petitioner to offer proof of the evolution of F.O.G.A.

(o) The refusal of the Examiner to exclude as incompetent testimony adduced by Commission's attorneys.

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(p) The failure of the Examiner to permit proof by the petitioner with respect to the economic history of the industry, the existence of the evil of style piracy, the effect thereof, the existence and necessity for protection of original styles, the method by which original styles are pirated, the economic effect of style piracy upon manufacturer, retailer, consumer and laborer and the program and activities of the Guild and the remedy thereof and of other evils constituting the Guild program and to the refusal of the Examiner to permit the petitioner to make offers of proof with respect to the foregoing.

XI.

92a

Exception is taken to the rulings of law in the conduct of the hearing affecting the admission of testimony therein to the effect that whether or not the program of the petitioner is directed at the elimination of an evil is immaterial, that the purpose of and need for the actions of the petitioner is immaterial; that the effect of the activities of the petitioner is immaterial and that whether or not a dress is a copy of an original is immaterial.

XII.

Exception is taken to the failure of the Commission to find that the Guild program does not violate the Federal Trade Commission Act.

93a

XIII.

For the foregoing reasons, your petitioner urges that the aforesaid Findings, Conclusions and Order of the Federal Trade Commission in this proceeding are null and void.

94a

*Petition to Review and Set Aside.***XIV.**

WHEREFORE, your petitioner respectfully prays this Honorable Court to review the record and Trial Examiner's report and exceptions thereto and the Findings, Conclusions, Order and proceedings of the Federal Trade Commission in this matter and set aside and hold for nought and declare null and void the Findings and Conclusions of and the said Order to cease and desist from alleged violations of the Federal Trade Commission Act.

FASHION ORIGINATORS GUILD OF AMERICA, INC.,
By MAURICE RENTNER,
President.

95a

WEISMAN, QUINN, ALLAN & SPETT,
Attorneys for Petitioners,
1450 Broadway,
New York City.

96a

Certification of Record.

UNITED STATES OF AMERICA

Before Federal Trade Commission, ss.:

IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.

Docket
No. 2769

2

I, A. N. Ross, acting secretary of the Federal Trade Commission, DO HEREBY CERTIFY that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

- Part 1—Pleadings
- Part 2—Testimony (pages 1-751)
- Part 3—Testimony (pages 752-1584)
- Part 4—Testimony (pages 1585-2695)
- Part 5—Testimony (pages 2696-3581)
- Part 6—Testimony (pages 3582-4583)
- Part 7—Testimony (pages 4584-5659)
- Part 8—Testimony (pages 5660-6621)
- Part 9—Testimony (pages 6622-7680)
- Part 10—Testimony (pages 7681-8418)
- Part 11—Exhibits (Commission's Exhibits 1-200)
- Part 12—Exhibits (Commission's Exhibits 201-450)
- Part 13—Exhibits (Commission's Exhibits 451-625)
- Part 14—Exhibits (Commission's Exhibits 626-750)
- Part 15—Exhibits (Commission's Exhibits 751-850)

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Certification of Record.

Part 16—Exhibits (Commission's Exhibits 851-975)

Part 17—Exhibits (Commission's Exhibits 976-1052)

Part 18—Exhibits (Respondents' Exhibits)

and separate original exhibits marked:

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2769-1

2769-1

That this transcript is certified to the United States Circuit Court of Appeals for the Second Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated February 8, 1939, and amended March 29, 1939, entered by the Federal Trade Commission in that proceeding.

IN WITNESS WHEREOF, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 26th day of August, A. D. 1939.

(Seal)

A. N. ROSS,
Acting Secretary.

Complaint.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC. their respective officers, directors and members.

Docket-
No. 2769

8

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties and for other purposes," the Federal Trade Commission, having reason to believe that each and all of the parties named in Paragraphs One to Eight, both inclusive hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent Fashion Originators Guild of America, Inc., hereinafter referred to as respondent F.O.G.A., is a membership corporation organized March 7, 1932, under the laws of the State of New York, and is now existing under the laws of said state with its principal office and place of business located at 512 Seventh Avenue, in the City of New York, in said state. The membership of said corporation is divided into three

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groups as follows: (1) Ladies' Garment Manufacturers, (2) Textile Merchants, and (3) Affiliated Members, consisting of retail dealers in ladies' garments and accessories. The following named individuals of the said City of New York are executive officers of respondent F.O.G.A. and as such are designated as respondents herein: Maurice Rentner, President and Treasurer, 498 Seventh Avenue; Herbert Sondheim, First Vice President, 530 Seventh Avenue; Charles Gumprecht, Second Vice President, 36 West 47th Street; J. A. Livingston, Secretary, 498 Seventh Avenue; Albert M. Post, Executive Director, 512 Seventh Avenue; and James M. Golby, Executive Secretary, 512 Seventh Avenue.

- 11 The said respondent F.O.G.A. was organized for the ostensible purpose of establishing fair trade practices among its members and to carry out a style protective program to protect the originators of fashions and styles of ladies' garments against copying and piracy. As the organization of said respondent F.O.G.A. expanded to include textile merchants and retail dealers, it also sought to protect the originators of designs of fabrics and in addition to its regular membership established a division known as "Protective Affiliates" for those non-member ladies' garment manufacturers who cooperated in the style protective program of the said respondent F.O.G.A.; and also designated the Industrial Design Registration Bureau of the respondent National Federation of Textiles, Inc., as its agency to register the designs of fabrics submitted by members of its said Textile Merchants Group.

12 PARAGRAPH TWO: The membership of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. is divided into the following divisions: Dress Division, composed exclusively of manufacturers of ladies' and misses' dresses; Coat Division, composed exclusively of manufacturers of ladies' and misses' coats; Junior Miss

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Division, composed exclusively of manufacturers of junior misses' dresses; and the Sportswear Division, composed exclusively of manufacturers of ladies' sportswear.

From time to time the membership of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. and the aforesaid Divisions thereof, is increased by the addition of new members, so that all the members of said Group at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinbefore named as respondents as such officers, and the other members of the Board of Governors of said Ladies' Garment Manufacturers Group, hereinafter named, are also made respondents as representing all members of said group engaged in their respective lines of business, including those members not herein specifically named. The following named individuals of New York City, compose the Board of Governors of the Ladies' Garment Manufacturers Group of respondent F.O.G.A. and as such are named as respondents herein:

Dress Division: William Bass, representing William Bass Dress Corporation, 550 Seventh Avenue; David Bender, representing Bender & Hamburger, Inc., 530 Seventh Avenue; Louis J. Brenner, representing Brenner, Morris, Inc., 498 Seventh Avenue; Theodore Racoosin, representing Germaine Monteil, Inc., 1440 Broadway; Miss Jo Copeland, representing Jo Copeland, Inc., 15 West 47th Street; Charles Lang, representing Charles Lang, Inc., 498 Seventh Avenue; William Fox, representing Suttre-Fox, Inc., 498 Seventh Avenue; Samuel Kass, representing Kass-Sutton, Inc., 498 Seventh Avenue; Joseph Halpert, representing Joseph Halpert, Inc., 530 Seventh Avenue; D. Eli Lahm, representing Rose Barrack & Lahm, 530 Seventh Avenue; and Charles Miller, representing Strauss-Miller, Inc., 498 Seventh Avenue.

Coat Division: Louis M. Wersba, representing Deitsch, Wersba & Coppola, 512 Seventh Avenue; Kallman Carmel, representing Carmel Bros., Inc., 530 Seventh Avenue; and Leo A. Del Monte (alternate), representing Del Monte Hickey Co., 530 Seventh Avenue.

Junior Miss Division: Louis J. Mallas, representing Jane Junior Dresses, 498 Seventh Avenue.

Sportswear Division: David M. Goodstein, representing David M. Goodstein, Inc., 530 Seventh Avenue; and Matthew Kane (alternate), representing Kane-Weill, Inc., 498 Seventh Avenue.

- 17 The aforesaid members of the said Ladies' Garment Manufacturers Group of said respondent F.O.G.A., consisting of approximately one hundred eighty individuals, co-partners, and corporations, are located in various states of the United States, but principally in the City of New York, State of New York, in the City of Chicago, State of Illinois, and in the City of Boston, State of Massachusetts. Most of the said members are engaged in the business of designing and manufacturing ladies', misses' and junior misses' dresses, suits, and other similar garments of high quality, and in the sale of said garments at wholesale in the higher priced lines to retail dealers located in states other than the states of manufacture, causing said garments when so sold to be transported from their respective places of manufacture to the purchasers thereof, and there has been and now is a constant current of interstate trade and commerce in said products between the members of said Ladies' Garment Manufacturers Group of respondent F.O.G.A. and retail dealers in said garments, including said "Affiliated Members" of respondent F.O.G.A., located throughout the several states of the United States.
- 18

In the course and conduct of their said respective businesses, respondent members of the said Ladies' Garment Manufacturers Group of said respondent F.O.G.A., but for the matters and things hereinafter set forth, would be natu-

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rally and normally in competition with each other, and are in competition with other individuals, co-partners, and corporations also engaged in the manufacture of ladies', misses', and junior misses' dresses, suits, and other similar garments and in the interstate sale of said garments to retail dealers. Said members of the Ladies' Garment Manufacturers Group of respondent F.O.G.A., during the year 1935, manufactured and sold approximately 50 per cent of all ladies' dresses sold in the United States at the wholesale price of \$10.75 and above, and 30 per cent of all ladies' dresses sold in the United States at the wholesale price of \$6.75 and above. The said garments designed, manufactured and sold by said members are in such demand by the trade and public that all retail dealers of ladies' garments attempting to offer a full line of ladies' garments to the public are required to stock and handle some lines of the same.

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PARAGRAPH THREE: Respondent Austin M. DeLisser, 512 Seventh Avenue, New York City, is Executive Secretary of the Textile Merchants Group of the said respondent F.O.G.A. Respondents G. H. Conze, representing Susquehanna Silk Mills, 149 Madison Avenue; E. W. Freudenberg, representing Amrein, Freudenberg Co., 14 East 38th Street; Samuel Levine, representing Hess, Goldsmith & Co., 1400 Broadway; and E. E. Meyer, representing J. A. Wagenbauer, Inc., 469 Fifth Avenue, all of New York City, constitute the Board of Governors of said Textile Group of said respondent F.O.G.A., and as such are named as respondents herein. Said Textile Merchants Group of said respondent F.O.G.A. consists of approximately fifty individuals, co-partners, and corporations engaged in the business of importing, converting, and manufacturing textile fabrics.

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From time to time the membership of said Textile Merchants Group of said respondent F.O.G.A. is increased by

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the addition of new members, so that all the members of said group at any given time cannot be named as respondents herein without inconvenience and delay, wherefore, the officers hereinbefore named as respondents, as such officers, and the foregoing named individuals constituting the Board of Governors of the said Textile Merchants Group of said respondent F.O.G.A., are also made respondents as representing all members of said Textile Group of said respondent F.O.G.A., including those not herein specifically named.

23 The various members of said Textile Merchants Group of said respondent F.O.G.A., in the course and conduct of their said businesses, sell textile fabrics to manufacturers of ladies' garments located in states other than the State of New York, causing said products when so sold to be transported from their respective places of business to the aforesaid purchasers thereof, and there has been and now is a constant current of interstate trade and commerce in said products between members of the Textile Merchants Group and members of the said Ladies' Garment Manufacturers Group of said respondent F.O.G.A., and their said competitors located throughout the several states of the United States.

24 In the course and conduct of their said respective businesses, respondent members of the said Textile Merchants Group of said respondent F.O.G.A., but for the matters and things hereinafter set forth, would be naturally and normally in competition with each other, and otherwise are in such competition with other individuals, co-partners, and corporations also engaged in the business of importing, converting, and manufacturing textile fabrics and in the sale of said fabrics to retail dealers in interstate commerce.

PARAGRAPH FOUR: Respondent National Federation of Textiles, Inc., hereinafter referred to as respondent Tex-

tiles, Inc., is a membership corporation organized under the laws of the State of Connecticut with its principal office and place of business at 10 East 40th Street, in the City of New York, State of New York. Peter Van Horn is President and Irene L. Blunt is Secretary of said respondent Textiles, Inc. The membership of said respondent Textiles, Inc. is made up of approximately one hundred converters, dyers, printers, and manufacturers of silk and rayon fabrics located in the principal cities of the Eastern portion of the United States. The said respondent, Textiles, Inc., operates and maintains a clearing house for the registration of designs of silks, rayons, laces, and embroideries under the name of Industrial Design Registration Bureau, which has been designated by the Textile Merchants Group of the said respondent F.O.G.A., as the official registration agency of designs of fabrics manufactured and sold by the members of said Group.

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PARAGRAPH FIVE: Respondent Marshall Field & Company is an Illinois corporation with its office located at 222 North Bank Drive in the City of Chicago and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise including ladies' garments. John McKinlay is President and T. H. Eddy is Secretary and Treasurer of said respondent Marshall Field & Company.

Respondent Allied Stores Corporation is a Delaware corporation with its office located at 1440 Broadway, New York City, State of New York, owning and operating the retail stores of Jordan Marsh Company located in Boston, Massachusetts, and the Golden Rule Store located in St. Paul, Minnesota, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. B. Earl Puckett is President and A. C. Hallan is Secretary and Treasurer of said respondent Allied Stores Corporation.

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Respondent Lindner Company is an Ohio corporation with its office located at Euclid Avenue and East 14th Street in the City of Cleveland, State of Ohio, owning and operating stores in the City of Cleveland, Ohio, in the City of Binghamton, State of New York, and in the City of Elmira, State of New York, and is an affiliated member of respondent F.O.G.A., engaged in the retail distribution of merchandise, including ladies' garments. Mack Gordon is President and Edward Schwarz is Secretary of said respondent Lindner Company.

29 Respondent Horne Company is a Pennsylvania corporation with its office located on Penn Avenue at Stanwix Street, in the City of Pittsburgh, owning and operating a department store in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. A. H. Burchfield is President and W. H. Friesell is Secretary and Treasurer of said respondent Horne Company.

Respondent Mandel Brothers, Inc., is a Delaware corporation with its office located at 1 North State Street in the City of Chicago, State of Illinois, owning and operating a department store located in said City, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. Edwin F. Mandel is President and Ben J. Altheimer is Secretary of said respondent Mandel Brothers, Inc.

30 Respondent John Wanamaker, Philadelphia, is a Pennsylvania corporation with its office located in the City of Philadelphia, State of Pennsylvania, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. Said respondent also owns the entire corporate stock of John Wanamaker, a New York corporation, engaged in a similar business in the City of New

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York in said state. Wm. L. Nevin is President and Henry H. Funk is Secretary of said respondent John Wanamaker, Philadelphia.

Respondent Lit Brothers is a Pennsylvania corporation with its office located at Market and Eighth Streets, in the City of Philadelphia, State of Pennsylvania, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. G. H. Johnson is President and A. T. Hild is Assistant Secretary of said respondent Lit Brothers.

Respondent Bullock's, Inc., is a Delaware corporation with its office located at Broadway, Hill and Seventh Streets, in the City of Los Angeles, State of California, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise, including ladies' garments. P. G. Winnett is President and M. E. Arnett is Secretary of said respondent Bullock's, Inc.

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Respondent Emporium Capwell Corporation is a California corporation with its office located at 835 Market Street, in the City of San Francisco, owning and operating the Capwell Department Store in Oakland, California, and the Emporium Department Store in San Francisco, and is an affiliated member of respondent F.O.G.A., engaged in the retail distribution of merchandise, including ladies' garments. A. B. C. Dohrmann is President and E. C. Lipman is Vice President and Manager of said respondent Emporium Capwell Corporation.

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Respondent J. L. Hudson Company is a Michigan corporation with its office located in the City of Detroit, owning and operating a department store located in said city, and is an affiliated member of respondent F.O.G.A., engaged in the retail sale and distribution of merchandise,

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including ladies' garments. R. H. Webber is President and W. A. Petzold is Secretary of said respondent J. L. Hudson Company.

39 The membership of the said Affiliated Members Group of the said respondent F.O.G.A. consists of approximately twelve thousand retail dealers in ladies' garments and accessories located in the principal trading centers of the several states of the United States, and include a substantial number of leading department stores and exclusive ladies' wear shops. From time to time the membership of the said Affiliated Member Group of said respondent F.O.G.A. is increased by the addition of new members so that all the affiliated retail dealer members of said respondent F.O.G.A. at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the foregoing respondent affiliated members of said respondent F.O.G.A. described in this paragraph are also made respondents herein as representing all affiliated retail members of said respondent F.O.G.A., including those not herein specifically named.

36 PARAGRAPH SIX: Respondent Michigan Avenue Guild of Chicago, hereinafter referred to as respondent M.A.G., is a membership corporation organized December 27, 1932, under the laws of the State of Illinois, and is now existing under the laws of said state as a non-profit organization with its principal office and place of business located at 840 North Michigan Avenue, City of Chicago, in said state. The membership of said corporation consists of approximately two hundred retail dealers of ladies' wearing apparel, located in and near the said City of Chicago, approved by the executive committee of said M.A.G., and who are, or have agreed to become, affiliated members of

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said respondent F.O.G.A., or who have agreed to comply with the trade practice rules and regulations of said respondent F.O.G.A. The following named individuals of said City of Chicago are officers and directors of said respondent M.A.G., and as such are designated as respondents herein: George M. Gleason, President and Director, representing Saks-Fifth Avenue, 840 North Michigan Avenue; Guy L. Ederheimer, Vice-President and Director, representing Leschin, Inc., 318 South Michigan Avenue; L. R. Pearson, Treasurer, representing Martha Weathered Shop, 950 North Michigan Avenue; Edw. A. Fletcher, Secretary, 840 North Michigan Avenue; Harry Blum, Director, representing Blum's-Vogue, Inc., 630 South Michigan Avenue; Frank L. Cole, Director, representing Martha Weathered Shop, 950 North Michigan Avenue; Herman Friedman, Director, representing Kermans, 160 North Michigan Avenue; Mrs. Sally K. Greenebaum, Director, representing Sally K. Greenebaum, 540 North Michigan Avenue; Clarence A. Powell, Director, representing Powell-700 North, Inc., 700 North Michigan Avenue; Bernard Rose, Director, representing South Shore Vogue, 2372 East 71st Street; and Mrs. Elise A. Runyan, Director, representing Elise A. Runyan, Inc., 1365 East 53rd Street.

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From time to time the membership of said respondent M.A.G. is increased by the addition of new members so that all the affiliated members of said respondent M.A.G. at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officers and directors of respondent M.A.G. hereinbefore named as respondents, as such officers and directors, are also made respondents as representing all members of said respondent M.A.G., including those not herein specifically named.

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"PARAGRAPH SEVEN: Respondent Minneapolis Fashion Guild, hereinafter referred to as respondent Minneapolis

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Guild, is a membership corporation organized on or about June 1, 1932, under the laws of the State of Minnesota. Respondent Roy H. Bjorkman, representing respondent Roy H. Bjorkman, Inc., a member of said respondent Minneapolis Guild, located at Tenth and Nicollet, Minneapolis, Minnesota, is Executive Secretary of said respondent Minneapolis Guild. The membership of said Minneapolis Guild consists of approximately fifteen persons, firms and corporations engaged in the sale at retail of ladies' dresses, suits, coats and sportswear, and whose stores are located in the City of Minneapolis, in said state, and who are, or who have agreed to become, affiliated members of the said respondent F.O.G.A.

From time to time the membership of said respondent Minneapolis Guild is increased by the addition of new members so that all the affiliated members of said respondent Minneapolis Guild at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officer and member hereinbefore named as respondent, as such officer and member of Minneapolis Guild, is also made respondent as representing all members of said respondent Minneapolis Guild, including those not herein specifically named.

PARAGRAPH EIGHT: Ladies' Ready-to-Wear, Guild of Baltimore, Inc., hereinafter referred to as respondent Baltimore Guild, is a membership corporation organized under the laws of the State of Maryland on or about January 1, 1935, and now existing under the laws of said State. The membership of said Baltimore Guild consists of approximately forty persons, firms and corporations engaged in the sale at retail of ladies' dresses, suits, coats and sportswear, and whose stores are located in the City of Baltimore, State of Maryland, and who are, or have agreed to become, affiliated members of the respondent F.O.G.A. The following named individuals of the said

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City of Baltimore are officers and directors of respondent Baltimore Guild, and as such are designated as respondents herein: C. F. Roycroft, Secretary, 1200 Lexington Building; Charles G. Hutzler, President and Director, representing Hutzler Brothers Co., 212 North Howard Street; Allen S. Metzger, Vice-President and Director, representing The Maison Annette Co., 328 North Charles Street; Fred H. Alperstein, Director, representing The Gaxton Company, 214 North Charles Street; William Pollock, Director, representing The Hub, Charles and Baltimore Streets; Lester Bonwit, Director, representing Bonwit Lennon, Inc., 220 North Charles Street; Martin Kohn, Director, representing Hochschild Kohn & Co., Howard and Lexington Streets; Albert D. Slesinger, Director, representing Slesingers, Inc., 342 North Charles Street; J. E. Ellington, Director, representing The May Company, Howard and Lexington Streets; Sam J. Schleisner, Director, representing the Schleisner Company, Howard and Saratoga Streets; and Hal W. Kenaston, Director, representing O'Neill & Company, Charles and Lexington Streets.

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From time to time the membership of said respondent Baltimore Guild is increased by the addition of new members so that all the members of said respondent Baltimore Guild at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officers and directors hereinbefore named as respondents, as such officers and directors of said respondent Baltimore Guild, are also made respondents as representing all members of said respondent Baltimore Guild, including those not herein specifically named.

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PARAGRAPH NINE: The said respondents hereinbefore named and described, and each of them, during the period of time, to-wit, from January 1, 1932 to the date of this complaint, have entered into an agreement, combination,

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and conspiracy with each other and with other persons, to hinder and suppress competition in the interstate sale and distribution of textile fabrics to manufacturers of ladies' and misses' garments, including dresses, suits, and coats; and also to hinder and suppress competition between and among said manufacturers of said garments in the interstate sale and distribution of their said products to retail dealers; and also to restrain interstate trade in said textile fabrics and said garments; and also to create a monopoly in the manufacture and interstate sale of said fabrics and said garments in the said members and affiliated members of said respondent F.O.G.A. Pursuant to said agreement, combination and conspiracy said respondents have respectively and cooperatively performed, and are now so performing, the following acts and practices, to-wit:

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(a) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, manufacturers of ladies' garments to confine the purchases of their requirements of textiles and fabrics to members of said Textile Merchants Group of respondent F.O.G.A., or to importers, converters, and manufacturers who have cooperated and are now cooperating with said respondent F.O.G.A. by registering their designs of said fabrics and textiles with the said respondent F.O.G.A. or with the said Industrial Design Registration Bureau of said respondent Textile, Inc.; under the penalty of being required to pay fines of substantial amounts of money to said respondent F.O.G.A., and of being boycotted by members of said Textile Merchants Group of said respondent F.O.G.A.

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(b) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, said ladies' garment manufacturers to confine the sales of their merchandise to retail dealers who are affiliated members of said respondent F.O.G.A., or who have cooperated and are now cooper-

ating with said respondent by purchasing their requirements of ladies' garments exclusively from the said members of said Ladies' Garment Manufacturers Group or said protective affiliates of said respondent F.O.G.A., or otherwise have cooperated or are cooperating with the respondent F.O.G.A. in its style protective program as set forth herein; under penalty of being required to pay fines of substantial amounts of money to said respondent F.O.G.A., and of being boycotted by said affiliated members of said respondent F.O.G.A. or other retail dealers who have cooperated and are now cooperating with said respondent F.O.G.A. in its style protective program as set forth herein.

(c) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, retail dealers of ladies' garments to become affiliated members of said respondent F.O.G.A., and to enter into agreements with said respondent F.O.G.A. by which and pursuant to which said retail dealers purchase their requirements of the respective lines of ladies' garments from the members of said Ladies' Garment Manufacturers Group of the said respondent F.O.G.A. or the said protective affiliates, insofar as those respective lines are sold by said members or protective affiliates; and to refuse to purchase said ladies' garments from manufacturers who have copied garments adjudged and reported by said respondent F.O.G.A. to have been designed by said members of said Ladies' Garment Manufacturers Group or said protective affiliates of said respondent F.O.G.A.; and upon notice from said respondent F.O.G.A. to return all garments to said manufacturers which are adjudged by said respondent F.O.G.A. to be copies of garments designed, manufactured and sold by members of said Ladies Garment Manufacturers Group, or said protective affiliates of said respondent F.O.G.A., and registered with said respondent F.O.G.A.; and to otherwise cooperate with said respondent F.O.G.A. in re-

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moving from the market garments of manufacturers who are not cooperating with said respondent F.O.G.A. in its style protective program set forth herein; under penalty of being blacklisted and boycotted by the members of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. as more particularly described in sub-paragraph (d) hereof.

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(d) Said respondent F.O.G.A. has employed and now employs shoppers to spy upon retail dealers, including said affiliated members of said respondent F.O.G.A., to ascertain whether or not any of the ladies' garments being offered for sale by said retail dealers appears to be a copy of garments designed, manufactured, or sold by members of said Ladies' Garment Manufacturers Group or said protective affiliates of said respondent F.O.G.A. and registered with said respondent F.O.G.A.; and where said retail dealers are offering for sale garments which appear to be such copies and said retail dealers refuse or decline to cooperate with said respondent F.O.G.A. in removing from the market the garments of manufacturers who are not cooperating with said respondent F.O.G.A. in its style protective program as set forth herein, said respondent F.O.G.A. places the names of such non-cooperating retail dealers on a blacklist and circulates said blacklist among the members of said Ladies' Garment Manufacturers Group and said Textile Merchants Group of said respondent F.O.G.A., who thereupon and thereafter refuse to sell fabrics or ladies' garments designed and manufactured by them to such non-cooperating retail dealers; and since the date of its organization said respondent F.O.G.A. has blacklisted, and said members of said respondent F.O.G.A. have refused to sell their products to more than four hundred retail dealers located throughout the several states of the United States.

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(e) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, the members of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. to refuse to exhibit, sell or ship merchandise to persons conducting retail establishments from residential premises, or who do not cooperate with said respondent F.O.G.A. in its style protective program as set forth herein; and also refuse to participate in fashion shows sponsored by retail dealers or to display samples to group buyers; and also to agree upon uniform terms of sale and discounts, and to otherwise refrain from competing for the business of said retail dealers; under penalty of being required to pay to the said respondent F.O.G.A. fines in substantial amounts of money, and of being expelled from membership in said respondent F.O.G.A.

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(f) Said respondent F.O.G.A., upon ascertaining through reports of its said shoppers that a member of said Ladies' Garment Manufacturers Group, or any other manufacturer of ladies' garments, has been selling ladies' garments to retail dealers which are copies of garments adjudged by said respondent F.O.G.A. to have been designed by members of said Ladies' Garment Manufacturers Group of said respondent F.O.G.A. and registered with the said respondent F.O.G.A., demands that said manufacturers discontinue said practice and cooperate with said respondent F.O.G.A. in removing from the market the garments adjudged to be copies, and if said manufacturers refuse to so comply with said demands, said respondent F.O.G.A. places the names of said non-cooperating manufacturers upon a blacklist which is circulated among the retail dealers, affiliated members of said respondent F.O.G.A. Said retail dealers thereupon and thereafter, pursuant to coercion on the part of said respondent F.O.G.A., refuse to further purchase their requirements of ladies' garments from said non-cooperating manufacturers;

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and since the date of its organization said respondent F.O.G.A. has caused its affiliated members to refuse to purchase ladies' garments from more than one hundred ladies' garment manufacturers located throughout the several states of the United States.

(g) Said respondent F.O.G.A. has coerced and compelled, and now coerces and compels, said respondent Textile Merchants Group to register all designs of fabrics and textiles imported, converted, or manufactured by them with the said respondent F.O.G.A. or said Industrial Design Registration Bureau of respondent Textiles, Inc., and to confine the sale of their fabrics, so registered, to members or affiliated members of said protective affiliates of said respondent F.O.G.A., and to refrain from selling said products to garment manufacturers or retail dealers who are not members or affiliated members or protective affiliates of said respondent F.O.G.A.

(h) Said respondent Textiles, Inc., operating through and by means of its said division known as Industrial Design Registration Bureau, has, within the past year, in the solicitation of the registration of designs of fabrics from importers, converters and manufacturers of textile fabrics, notified said importers, converters and manufacturers of textile fabrics that the members of the Ladies' Garment Manufacturers Group and protective affiliates of the respondent F.O.G.A. had pledged themselves in writing to use only the registered designs of fabrics registered with said Industrial Design Registration Bureau, and that said Bureau had been designated by the said respondent F.O.G.A. as its agency to handle the registration of designs for said textile fabrics.

(i) Said respondents local guilds, M.A.G., Minneapolis Guild, Baltimore Guild, and their officers and members, since their organization, have cooperated with the said

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respondent F.O.G.A. in its style protective program by entering into agreements with said respondent F.O.G.A. whereby it is agreed on the part of the respondent F.O.G.A. that its members will not sell merchandise within the respective areas of said local guilds to retailers who are not members in good standing of said guilds, or to those retailers whose practices do not conform to the standards of fair trade practice of the respective guilds; and it is agreed on the part of the said local guilds that their members will not purchase ready-to-wear merchandise from any manufacturer not cooperating with said respondent F.O.G.A. in its style protective program, and the officers and officials of said local guilds have cooperated with the said respondent F.O.G.A. in using their official positions in the enforcement and maintenance of said agreements.

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PARAGRAPH TEN: The result of the said agreement, combination and conspiracy, and the acts and practices performed thereunder by said respondents, as hereinbefore set forth, has been and now is (a) to prevent and hinder importers, converters, and manufacturers of textile fabrics from selling their merchandise in interstate commerce to garment manufacturers who but for the existence of said agreement, combination or conspiracy would purchase said products; (b) to prevent retail dealers in ladies' and misses' garments from purchasing their requirements of said products in interstate commerce from the manufacturers thereof; (c) to force many retail dealers to discontinue the sale of said products because of their inability to maintain a supply thereof at reasonable prices; (d) to substantially increase the price of ladies' and misses' garments to the manufacturers, retail dealers and to the consuming public; and (e) to place in the hands of the respondent F.O.G.A. control over the business practices of the manufacturers and distributors of ladies' and misses' garments, and the power to exclude from this industry

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those manufacturers and distributors who do not conform to the rules and regulations established by said respondent F.O.G.A., and thus to tend to create a monopoly in the said respondent F.O.G.A. and its members.

65 PARAGRAPH ELEVEN: The foregoing alleged acts and practices of the said respondents have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes."

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 16th day of April, A. D., 1936, now issues this its complaint against said respondents.

NOTICE

66 Notice is hereby given you, Fashion Originators Guild of America, Inc., Maurice Rentner, Herbert Sondheim, Charles Gumprecht, J. A. Livingston, Albert M. Post, James M. Golby, William Bass of William Bass Dress Corporation, David Bender of Bender & Hamburger, Inc., Louis J. Brenner of Brenner, Morris, Inc., Theodore Racoosin of Germaine Monteil, Inc., Biss Jo Copeland of Jo Copeland, Inc., Charles Lang of Charles Lang, Inc., William Fox of Suttre-Fox, Inc., Samuel Kass of Kass-Sutton, Inc., Joseph Halpert of Joseph Halpert, Inc., D. Eli Lahm of Rose Barrack & Lahm, Charles Miller of Strauss-Miller, Inc., Louis M. Wersba of Deitsch, Wersba & Coppola, Kallman Carmel of Carmel Bros., Inc., Leo A. Del Monte of Del Monte Hickey Co., Louis J. Mailas of Jane Junior Dresses, David M. Goodstein of David M.

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Goodstein, Inc., Matthew Kane of Kane-Weill, Inc., Austin M. DeLisser, G. H. Conze of Susquehanna Silk Mills, E. W. Freudenberg of Amrein, Freudenberg Co., Samuel Levine of Hess, Goldsmith & Co., E. E. Meyer of J. A. Wagenbauer, Inc., Marshall Field & Company, Allied Stores Corporation, Lindner Company, Horne Company, Mandel Brothers, Inc., John Wanamaker Philadelphia, Lit Brothers, Bullock's, Inc., Emporium Capwell Corporation, J. L. Hudson Company, Michigan Avenue Guild of Chicago, George M. Gleason of Saks-Fifth Avenue, Guy L. Ederheimer of Leschin, Inc., L. R. Pearson of Martha Weathered Shop, Edw. A. Fletcher, Harry Blum of Blum's-Vogue, Inc., Frank L. Cole of Martha Weathered Shop, Herman Friedman of Kermans, Mrs. Sally K. Greenebaum of Sally K. Greenebaum, Clarence A. Powell of Powell-700 North, Inc., Bernard Rose of South Shore Vogue, Mrs. Elise A. Runyan of Elise A. Runyan, Inc., Minneapolis Fashion Guild, Roy H. Bjorkman of Roy H. Bjorkman, Inc., Ladies' Ready-to-Wear Guild of Baltimore, Inc., C. F. Roycroft, Charles G. Hutzler of Hutzler Brothers Co., Allen S. Metzger of The Maison Annette Co., Fred H. Alperstein of The Gaxton Company, William Pollock of The Hub, Lester Bonwit of Bonwit-Lennon, Inc., Martin Kohn of Hochschild Kohn & Co., Albert D. Slesinger of Slesingers, Inc., J. E. Ellington of The May Company, Sam J. Schleisner of Schleisner Company, Hal W. Kenaston of O'Neill & Company, National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt, respondents herein, that the 22nd day of May, A. D., 1936, at 2:00 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said Act, to appear and show cause why an order

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should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed, and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule V) provide as follows:

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(a) In case of desire to contest the proceeding the respondent shall, within 20 days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

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(c) Failure of the respondent to file answer within the time above provided and failure to appear at the fixed time and place of hearing shall be deemed to authorize the Commission, without further hearing or notice to respondent, to proceed in regular course on the charges set forth in the complaint, and make, enter, issue, and serve upon respondent findings of fact and an order to cease and desist.

(d) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent admits all the material

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allegations of the complaint to be true. Any such answer shall be deemed to waive a hearing thereon, and to authorize the Commission without trial and without further evidence, or other intervening procedure, to make, enter, issue and serve upon respondent:

(1) In cases arising under Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." (the Federal Trade Commission Act)

* * * * *
findings of fact and an order to cease and desist from the violations of law charged in the complaint.

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IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed at Washington, D. C., this 16th day of April, A. D., 1936.

By the Commission.

OTIS B. JOHNSON,
Secretary.

(Seal)

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76 Answer of Respondent Fashion Originators Guild of America, Inc.

(Filed May 6, 1936.)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER

OF

77 FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.

Docket
No. 2769

78 The respondent, Fashion Originators Guild of America, Inc., its respective officers, directors and members named as respondents, by their attorneys, Weisman, Quinn, Allan & Spett, and Textile Merchants Group of said respondent, Fashion Originators Guild of America, Inc., its officers, directors and members named as respondents, by their attorneys, Goldwater & Flynn, answering the complaint and the charges therein set forth, do hereby state and allege as follows:

PALAGRAPH ONE.

Answering the first paragraph of Paragraph One of the complaint, respondent, Fashion Originators Guild of America, Inc. admits that it is a membership corporation, organized on the 7th day of March, 1932, under the laws of the State of New York, that it maintains its office at 512 Seventh Avenue, in New York City, and that the indi-

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viduals named therein are such officers, directors and members, and are located at the addresses set forth therein, but denies each and every other allegation therein set forth and specifically denies that the said Fashion Originators Guild of America, Inc. maintains any form of membership consisting of retail dealers in ladies' garments and accessories or others, designated in the said complaint as "affiliated members," and specifically denies that retailers are in any way members of or are affiliated with the Guild except as hereinafter specifically set forth.

Answering the second paragraph of Paragraph One, the respondent, Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, except that it admits that the purpose for which it was established was to establish fair trade practices among its members and to carry out a style protective program to protect the originators of fashions and styles of ladies' garments against copying and piracy, and specifically further states that as set forth in the certificate of incorporation of respondent, Fashion Originators Guild of America, Inc., the purposes for which it was organized, are further as follows:

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To protect the originators of fashions and styles against copying and piracy of styles of any trade or industry; to promote cooperation and friendly intercourse in the wearing apparel industries; to establish and maintain uniformity and certainty in the customs and commercial usages of trade; to acquire, preserve and disseminate information and literature which will tend to augment the sale of the commodities manufactured or sold; to advance the trade and commercial interests of its members and to foster the industries of its members throughout the Americas and to promote the sale, identification and recognition of original style and merchandise of the industries of its members.

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Further answering the second paragraph of Paragraph One, respondent Fashion Originators Guild of America, Inc. affirmatively alleges that from its very inception its organization included the said Textile Merchants Group; and in this connection further affirmatively alleges that the Constitution and By-Laws of the respondent, Fashion Originators Guild of America, Inc. provide, with respect to the said Textile Merchants Group, as follows:

"Textile Merchants' Contributing Membership.

(a) Who is eligible.

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Any manufacturer of material which ultimately enters into a completed lady's garment is eligible for membership as a contributing textile member, subject to the provisions hereinafter set forth.

(b) Requisite prior approval.

Notwithstanding the foregoing, no manufacturer of material shall be eligible to membership unless the reputation and standing of such manufacturer shall have been first approved by the Special Membership Committee duly appointed by the contributing textile members, and unless such manufacturer shall, in addition, comply with all other general organization requirements applicable to eligibility for membership.

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(c) Limitation of liability.

Such contributing textile members are desirous of giving to the Guild their moral and financial support by reason of their approval of the fundamental principles and ideals of the Guild, but shall be without liability or obligation to any party whatsoever by reason of any contract, transaction, act, deed or matter of the Guild or of the officers and/or directors and/or members of the Guild. Such con-

tributing textile members shall not be entitled to vote for or in the election of the directors or Board of Governors of the Guild. Acquiescence in or approval of any act, deed, contract of transaction of the Guild and/or any member and/or any officer and/or any director thereof by any contributing textile member can be obtained only by the written signature of such contributing textile member, and shall not be inferred by such member's silence or failure to dissent."

Further answering the second paragraph of Paragraph One, respondents answering herein affirmatively allege that the Industrial Design Registration Bureau of the National Federation of Textiles, Inc. never was nor now is, an agency of the Fashion Originators Guild of America, Inc. nor has there ever been or now is there any financial, or other connection or affiliation of whatsoever description between the said Industrial Design Registration Bureau of the National Federation of Textiles and the respondent, Fashion Originators Guild of America, Inc., or Textile Merchants Group of the Fashion Originators Guild of America, Inc. Respondents affirmatively allege that the said Industrial Design Registration Bureau was formulated and formed, upon information and belief, at the request of numerous textile merchants on or about the 1st day of August, 1928, approximately four years prior to the formation of respondent, Fashion Originators Guild of America, Inc. Its services and facilities are open and available to all textile manufacturers or merchants and others who desire to register original designs. Members of the Textile Merchants Group of the Fashion Originators Guild of America, Inc. registered their designs with such Bureau prior to becoming members of the Fashion Originators Guild of America, Inc. and have not ceased so to do upon becoming affiliated with respondent, Fashion Originators Guild of America, Inc.

PARAGRAPH TWO.

Answering the first, second, third, fourth, fifth and sixth paragraphs of Paragraph Two of the complaint, respondent Fashion Originators Guild of America, Inc. admits the allegations set forth therein contained to be substantially correct, but affirmatively alleges that the membership of the said Fashion Originators Guild of America, Inc. has decreased from time to time as well as increased.

Answering the seventh paragraph of Paragraph Two, respondent admits the allegations therein contained to be substantially correct, but denies that most of the members of the Ladies' Garment Manufacturers Group are engaged
89 in the sale of garments in the higher price lines.

Answering the eighth paragraph of Paragraph Two of the complaint, respondent denies each and every allegation thereof, but admits that the members of the Ladies' Garment Group are naturally and normally in competition with other individuals, copartners and corporations also engaged in the manufacture of garments and in the interstate sale of said garments to retail dealers, and it is affirmatively alleged that irrespective of the matters and things set forth in the said complaint, the members of the Ladies Garment Manufacturer's Group of the respondent, Fashion Originators Guild of America, Inc. are naturally and normally in competition with each other, and with
90 other individuals, firms or corporations also engaged in the manufacture of ladies', misses' and junior misses' dresses, coats, and suits and other similar garments, and in the interstate sale of said garments to retail dealers.

Respondent further affirmatively alleges that there is no perceptible demand for any single style or group of styles by named manufacturers; that the consumer's demand is only for fashion themes which any and all manufacturers can interpret.

PARAGRAPH THREE.

Answering the first, second and third paragraphs of Paragraph Three of the complaint, respondents admit that the allegations therein contained are substantially correct, but affirmatively allege that the said Textile Merchants Group does not have a Board of Governors and that the names individuals comprise its Steering Committee, and further alleges that the membership of such Textile Merchants Group thereof has decreased from time to time as well as increased.

Answering the fourth paragraph of Paragraph Three, respondents deny each and every allegation therein contained but admit that said Textile Merchants Group are in competition with other individuals, copartners, and corporations also engaged in the business of importing, converting and manufacturing textile fabrics and in the sale of said fabrics to retail dealers in Interstate Commerce, and further affirmatively allege that irrespective of the matters and things set forth in the complaint are naturally and normally in competition with each other and otherwise are in such competition with other individuals, firms or corporations also engaged in the business of importing, converting and manufacturing textile fabrics and in the sale of said fabrics in interstate commerce.

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PARAGRAPH FOUR.

Answering paragraph Four, respondents answering are ignorant herein of the truth of the allegations therein contained and consequently are unable to admit or deny the same and respondents further repeat and reiterate the allegations and matters set forth in Paragraph One of this answer with respect to the said Industrial Design Registration Bureau of the National Federation of Textiles, Inc.; and affirmatively allege that not only do members of the Guild register print, jacquards and metal fabrics with

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it, but its facilities are also available to and are used by non-members of the Textile Merchants Group of the respondent Fashion Originators Guild of America, Inc., such registering manufacturers comprising a substantial portion of all manufacturers of textiles in the United States.

PARAGRAPH FIVE:

95 Answering the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of Paragraph Five, respondent, Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently is unable to admit or deny them, except that it denies that each and every respondent named in each of the paragraphs referred to above is an affiliated member of the respondent Fashion Originators Guild of America, and further affirmatively alleges that each of them has merely signed and delivered to the respondent, Fashion Originators Guild of America, Inc. a statement of policy by which it represented among other things that it would not knowingly buy or sell copies of merchandise originated by members of the Garment Manufacturers Group or Protective Affiliates of respondent, Fashion Originators Guild of America, Inc. to which statement of policy respondents beg leave to refer upon the hearing or trial of this proceeding.

96 Answering the eleventh paragraph of Paragraph Five of the complaint, respondent Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, and affirmatively alleges that approximately 12,000 retailers located in the several states of the United States have merely signed and delivered to the Fashion Originators Guild of America, Inc. a statement of policy, which statement represents among other things that the signer thereof will not knowingly buy or sell copies of merchandise originated by members of Garment Manufacturers Group or Protective Affiliates of respondent,

Fashion Originators Guild of America, Inc., to which statement of policy respondent Fashion Originators Guild of America, Inc. begs leave to refer upon any hearing of this proceeding.

PARAGRAPH SIX.

Answering the first paragraph of Paragraph Six respondent, Fashion Originators Guild of America, Inc., upon information and belief, admits that the allegations therein contained are substantially correct, but specifically denies that the membership of the Michigan Avenue Guild of Chicago are or have agreed to become affiliated members of the Fashion Originators Guild of America, Inc., or have agreed to comply with the Trade Practice Rules and Regulations of said respondent, Fashion Originators Guild of America, Inc. The respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that the respondent, Michigan Avenue Guild has entered into a certain agreement with the respondent Fashion Originators Guild of America, a copy of which agreement, the respondents beg leave to refer upon the hearing of this proceeding.

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Answering the second paragraph of Paragraph Six, respondent Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently are unable to either admit or deny them.

PARAGRAPH SEVEN.

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Answering the first paragraph of Paragraph Seven respondent, Fashion Originators Guild of America, Inc. upon information and belief admits that the allegations therein contained are substantially correct, but specifically denies that the membership of the Minneapolis Fashion Guild are or have agreed to become affiliated members of the Fashion Originators Guild of America, Inc. or have agreed to comply with the Trade Practice Rules and Regu-

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Answer of Respondent F. O. G. of A., Inc.

lations of said respondent, Fashion Originators Guild of America, Inc. The respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that the respondent Minneapolis Fashion Guild has entered into a certain agreement with the respondent Fashion Originators Guild of America, Inc., a copy of which agreement the respondents beg leave to refer to upon the hearing of this proceeding.

Answering the second paragraph of Paragraph Seven, respondent Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently are unable to either admit or deny them.

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PARAGRAPH EIGHT.

Answering the first paragraph of Paragraph Eight respondent Fashion Originators Guild of America, Inc. upon information and belief admits that the allegations therein contained are substantially correct, but specifically denies that the membership of the Ladies' Ready-To-Wear Guild of Baltimore are or have agreed to become affiliated members of the Fashion Originators Guild of America, Inc. or have agreed to comply with the Trade Practice Rules and Regulations of said respondent, Fashion Originators Guild of America, Inc. The respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that the respondent, Ladies' Ready-To-Wear Guild of Baltimore has entered into a certain agreement with the respondent Fashion Originators Guild of America, Inc., a copy of which agreement the respondents beg leave to refer to upon the hearing of this proceeding.

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Answering the second paragraph of Paragraph Eight, respondent Fashion Originators Guild of America, Inc. is ignorant of the truth of the allegations therein contained and consequently are unable to either admit or deny them.

PARAGRAPH NINE.

Answering the first paragraph of Paragraph Nine of the complaint, the respondents appearing hereby deny each and every allegation set forth therein, and affirmatively allege:

(a) that their program and any act committed in pursuance thereof has encouraged, stimulated and promoted fair and legitimate competition in the interstate sale and distribution of textile fabrics to manufacturers of ladies' and misses' garments, including dresses, suits and coats, and also has encouraged, stimulated and promoted competition between and among said manufacturers of said garments in the interstate sale and distribution of their said products to retail dealers; and also has encouraged, stimulated and promoted interstate trade in said textile fabrics and said garments; has aided the free flow of interstate commerce and has aided in wiping out unfair methods and means of competition in the manufacture and sale of ladies' ready-to-wear and the sale and manufacture of the textiles used in such manufacture; respondents further affirmatively allege that their program has aided in wiping out uneconomic and unsound practices and has generally been instrumental in bringing about a reasonable amount of stabilization of trade in the industry, and (b) that the members of the Ladies' Garment Manufacturers Group and of the Textile Merchants Group comprise a minority of their respective portions of the women's ready-to-wear industry both in number of individual persons, firms or corporations engaged therein, number of units produced, and dollar volume of merchandise sold.

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Answer of Respondent F. O. G. of A., Inc.

Answering Subparagraph (a) of Paragraph Nine, respondents answering herein deny each and every allegation therein contained and affirmatively allege that at no time have the member manufacturers of ladies' ready-to-wear garments agreed to nor are they compelled to confine their purchases of textiles and fabrics to members of the Textile Merchants Group of the Fashion Originators Guild of America, Inc. under penalty of being required to pay money fines of any description to said respondent Fashion Originators Guild of America, Inc. or of being boycotted by members of said Textile Merchants Group of said respondent Fashion Originators Guild of America, Inc. or under any other penalty of any other description; nor has the said respondent, Fashion Originators Guild of America, Inc. or the Textile Merchants Group thereof ever attempted to assess or collect fines in any amount from any non-member of the respondent, Fashion Originators Guild of America, Inc. or the said Textile Merchants Group thereof for any cause whatsoever. Respondent Fashion Originators Guild of America, Inc. further affirmatively alleges that regardless of any representation whatsoever which may exist to purchase only from textile manufacturers who register their designs with the said Industrial Design Registration Bureau of said respondent Textiles, Inc., that such representation, if any, applies equally to non-members as well as members of the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc., and that, in any event, such representation, if any, has never been enforced by the imposition or attempted imposition of any money fine, or by boycott by members of respondent Fashion Originators Guild of America, Inc. or said Textile Merchants Group of said respondent Fashion Originators Guild of America, Inc. or by means of coercion of whatsoever description. Respondents further affirmatively allege that, in any event, the right to and facilities for registration of designs with

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the Industrial Design Registration Bureau of respondent, Textiles, Inc. is open without discrimination to all manufacturers, importers or converters of textile fabrics, irrespective of whether or not they are affiliated with the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc., and in this connection respondents reiterate and re-allege the allegations set forth in paragraph One of this answer to the effect that the respondent, Fashion Originators Guild of America, Inc. and its Textile Merchants Group maintain no Registration Bureau for the registration of textile fabrics designs.

Answering Subparagraph (b) of Paragraph Nine, respondents answering herein deny each and every allegation therein contained, and affirmatively allege that the members of the Ladies Garment Manufacturers Group of respondent Fashion Originators Guild of America, Inc. sell their merchandise to any retail dealer who, irrespective of whether or not he confines his purchases to members of respondent, Fashion Originators Guild of America, Inc., declares it to be his policy not to knowingly buy or sell pirated styles of merchandise originated by members of the Ladies Garment Manufacturers Group of the respondent, Fashion Originators Guild of America, Inc. and further, affirmatively allege that they have at no time compelled or coerced or attempted to compel or coerce non-members by the assessment or collection of fines in any amount. Said respondent, Fashion Originators Guild of America, Inc. further affirmatively alleges that the carrying out of its program does not result in any illegal boycott in any manner, shape or form, and the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc. affirmatively alleges that, to the extent, if any, that the Ladies' Garment Manufacturers Group or the said protective affiliates of said respondent, Fashion Originators Guild of America, Inc. have had or now have dealings of whatsoever description with retail dealers, the said Textile Merchants Group have never participated nor do they now participate to any extent in such dealings.

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Answering Subparagraph (c) of Paragraph Nine of the complaint, respondent, Fashion Originators Guild of America, Inc. denies each and every allegation set forth therein and affirmatively alleges that any retail dealer may purchase their requirements of ladies' garments from any manufacturer, irrespective of whether or not such manufacturer is affiliated with respondent Fashion Originators Guild of America, Inc. so long as said retail dealer represents that he will not buy or sell pirated styles of merchandise originated by members of respondent Fashion Originators Guild of America, Inc., and its protective affiliates, and irrespective of such representation, is able to purchase sufficient merchandise in the ladies' ready-to-wear market without the necessity of purchasing from members of the Ladies' Garment Manufacturers Group of respondent Fashion Originators Guild of America, Inc. or its protective affiliates, and the Textile Merchants Group of respondent Fashion Originators Guild of America, Inc. repeats and reiterates the allegations set forth by it in Subparagraph (b) immediately above.

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Answering Subparagraph (d) of Paragraph Nine, respondent, Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, and affirmatively alleges that the shoppers employed by it are known to all retailers, are employed for the purpose of aiding the retailer in ascertaining adjudged pirated styles, and act merely in a reportorial capacity; and further affirmatively alleges that its program does not involve nor does the said Fashion Originators Guild of America, Inc. circulate any blacklist among the members of the Ladies' Garment Manufacturers Group or the said Textile Merchants Group of said respondent, Fashion Originators Guild of America, Inc., and the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc. repeats and reiterates each and every allegation set forth by it in Subparagraph (b) of Paragraph Nine of this

answer and specifically denies that any of its members has ever refused to sell fabrics designed and manufactured by them to any retail dealer, regardless of his conduct in relation to the program of respondent, Fashion Originators Guild of America, Inc., and affirmatively alleges that to the extent, if any, that respondent, Fashion Originators Guild of America, Inc. employs or has employed shoppers, that the said Textile Merchants Group has never had and does not now have any connection with such employment.

Answering Subparagraph (e) respondent, Fashion Originators Guild of America, Inc. denies each and every allegation therein contained, and affirmatively alleges that its Ladies Garment Manufacturers Group members do not sell their merchandise to persons conducting retail establishments from residential premises where such retail establishments violate the zoning laws or the multiple dwelling laws or the labor laws or any other law, ordinance, rule or regulation of any duly constituted governmental authority having jurisdiction over the premises. The respondent Fashion Originators Guild of America, Inc. further affirmatively alleges that the respondent Fashion Originators Guild of America, Inc. makes no attempt, nor has it at any time attempted to fix prices, control production or allocate customers, or otherwise refrain from competing for the business of retail dealers with establishments of whatsoever description and character.

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Answering Subparagraph (f) of the complaint, respondent Fashion Originators Guild of America, Inc. denies each and every allegation therein contained and affirmatively alleges that the members of the Ladies' Garment Manufacturers Group sell their merchandise to any retailer who represents among other things, that upon notification to said retailer that a particular style has been adjudged a copy after due hearing by the Impartial Committees of Style Piracy, the said retailer will remove the said pirated

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style from sale. As an aid to the retailer and to prevent loss to him, the said retailers represent among other things in their signed declaration of policy that they will employ the form "warranty clause" on all purchase orders, which clause in substance constitutes a warranty on the part of the selling manufacturer that the garments covered by the particular order are not copies of styles originated by members of the Ladies' Garment Manufacturers Group of respondent Fashion Originators Guild of America, Inc., so that in the event any style shall be adjudicated a copy, the same becomes a violation of the warranty of the copyist manufacturer and may be returned by the retailer.

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Answering Subparagraph (g) of the complaint, respondents answering herein deny each and every allegation contained therein and affirmatively allege that respondent, Fashion Originators Guild of America, Inc., has no facilities whatsoever for and no fabrics are, as a consequence, registered with the respondent Fashion Originators Guild of America, Inc., and that the registration facilities of the said Industrial Design Registration Bureau of respondent, Textiles, Inc. are restricted to certain specific items and not fabrics generally.

Answering Subparagraph (h) of paragraph Nine of the complaint, respondents answering herein deny each and every allegation therein contained.

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Answering Subparagraph (i) of paragraph Nine of the complaint, respondent Fashion Originators Guild of America, Inc. denies each and every allegation therein set forth, and Textile Merchants of respondent, Fashion Originators Guild of America, Inc. repeats and reiterates each and every allegation set forth by it in Subparagraph (b) of Paragraph Nine of this answer.

PARAGRAPH TEN

Answering Paragraph Ten of the complaint, respondent Fashion Originators Guild of America, Inc. denies each and every allegation therein contained.

PARAGRAPH ELEVEN

Answering Paragraph Eleven of the complaint, respondents deny each of the allegations therein contained and specifically deny that their acts and practices have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents in particular and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914 entitled "An Act to Create a Federal Trade Commission to Define its Powers and Duties and For No Other Purposes."

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**STATEMENT OF FACTS PURSUANT TO SUB-PARAGRAPH (a)
OF RULE 5 OF RULES OF FEDERAL TRADE COMMISSION.**

As and for its statement of facts, the respondent, Fashion Originators Guild of America, Inc., its respective officers, directors, and members named as respondents herein, and Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc., its officers, directors, executives and members named as respondents herein, affirmatively allege as follows:

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PARAGRAPH TWELVE

For some years prior to the formation of the respondent Fashion Originators Guild of America, Inc., the manufacturers creating styles in ladies' ready-to-wear garments and the manufacturers, importers and converters creating original designs in fabrics had been suffering serious finan-

cial reverses. Bankruptcies were rife and profitable business virtually non-existent and the market in quality merchandise in both these fields had become virtually demoralized. This unfortunate state of those patrons of the ladies' ready-to-wear industry which creates style and design was due in a very real sense, and to great degree to the growth of certain vicious and destructive practices in the trade, chief among which was the predatory and vicious practice, known as style piracy of stealing the ideas of the creator firm evolved by it at great expense.

PARAGRAPH THIRTEEN

125 To produce a typical sample line comprising from twenty-five to one hundred styles it is necessary to design and create a much larger number of dresses, many of which are subsequently discarded as not being suitable or properly acceptable to the trade. The production of such a line entails the employment of high salaried designers (many of them earning as much as \$50,000 a year) who make trips to Europe and to other fashion centers to seek inspiration for their original creations. In addition, the manufacturer employs sample hands, sketchers, and many other types of employees whose exclusive functions merely relate to the manufacture of the sample line. These and many other items of cost are borne by the creator of fashion. It has been estimated that before any return on investment is received by the creator, he has incurred a
126 cost of many thousands of dollars to produce his sample line.

Having incurred this cost, the copyist steals the result achieved by the creator without one penny of expense on his part, except for illegal purposes or for carrying out his nefarious schemes. In like manner the manufacturer, importer and converter of original textiles creates each season many new patterns calculated to attract purchasers

by their novelty and beauty, incurring in the process many thousands of dollars of designing cost. And, as in the case of the creating manufacturer, the fruits of this expense is stolen by the copyist, without any sharing of the burdens involved. Thus style and design piracy involved not only the theft of ideas but the theft of invested capital and the copyist manufacturer took a free ride on the financial investment of the creator.

PARAGRAPH FOURTEEN

The methods and means employed by the copyist, for the most part are uniformly nefarious and involve bribery, trespass, ~~breaking and entering~~, and the commission of crimes or other acts which in and of themselves amount to unfair competition.

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PARAGRAPH FIFTEEN

Copyist firms for the most part disregard quality and craftsmanship, produce their product under sweat-shop conditions, and by non-union labor, in contrast to the conditions existing among the members of the respondent, Fashion Originators Guild of America, Inc., whose factories are almost completely unionized and operate under prescribed union conditions.

PARAGRAPH SIXTEEN

As a result of the foregoing described practices the qualities of the materials, dyes and workmanship are cheapened and trends of competition are toward the poorest and the cheapest rather than the best goods that is accepted by the consumer, and consequently the consumer is misled as to cost of production and values. The consumer is deprived of the opportunity for a wider range of designs for choice. The steady pounding by the copyist manufacturer upon a few designs not only makes the de-

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Answer of Respondent F. O. G. of A., Inc.

signs monotonous, but in turn kills the popularity of the style and makes for rapid obsolescence of fashion and wasteful changes necessary.

PARAGRAPH SEVENTEEN

The retailer also suffers great loss and damage, the existence of copies compelling him to lower the price of the garment to a price below the original cost to him of the dress. Such successive mark-downs raised retail prices generally because the retailer was required to, recoup his loss upon other designs and styles.

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PARAGRAPH EIGHTEEN

To remedy the deplorable conditions above described, the respondent Fashion Originators Guild of America, Inc. was formed. Learning of the aims and purposes of the respondent, Fashion Originators Guild of America, Inc., retailers throughout the country signed and delivered "Declarations of Cooperation" directed toward the elimination of style piracy. In the said Declaration the retailer represents among other things, that he recognizes the property interests of the manufacturer in styles created by him, that he will not knowingly buy or sell copies thereof. The foregoing were substantially the only matters to which the retailer subscribed. Not being a member of the Guild he was not bound, by or in any way expected to obey rules or regulations promulgated by the Guild for its own membership. On the other hand, if a particular retailer declined to indicate his intention not to deal in pirated styles, or in the event that a retailer repudiated his continuing representation, or in the further event that a retailer persisted in the sale of copied merchandise, thereby imperiling the investment of the garment manufacturer members of the Guild, the respondent, Fashion Originators Guild of America, Inc. so advised its members.

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in order that they might protect themselves insofar as possible by refraining from selling their creations to such retailer.

PARAGRAPH NINETEEN

The manner in which disputes with respect to the existence in any given case of style piracy from members of the Ladies' Garment Manufacturers Group of respondent, Fashion Originators Guild of America, Inc. is as follows:

Provision was made for the formation of a panel composed of retailers selected at random from among signatory retail stores. From this panel, committees of three individuals are chosen in rotation. To insure impartiality, they are chosen at random from such panel. Notice of the hearing is given to all parties interested, including the alleged originator and the alleged copyist, both of whom are invited to appear and are given full opportunity to present evidence to support their respective contentions. To further insure complete impartiality, in the event the alleged copyist manufacturer believes for reasons sufficient unto himself, that a particular committee designated to sit with respect to a style manufactured by him is not impartial, he may object thereto and has the option of requesting an arbitration by a committee composed of an arbitrator named by himself, an arbitrator named by the respondent, Fashion Originators Guild of America, Inc. and a third selected by the two arbitrators. With respect to the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc., it is alleged that the machinery adopted by them is equally fair and impartial. The said Textile Merchants Group beg leave to refer in greater detail to the facts with respect thereto upon the hearing of this cause.

PARAGRAPH TWENTY

So as to further insure complete fairness, members of the Ladies' Garment Manufacturers Group of respondent, Fashion Originators Guild of America, Inc., in order to secure the benefit of the machinery above described register each design originated by them with the said Bureau prior to the release of such design for sale to the public. The purpose of this Registration Bureau is merely to fix the date of origination by the member of the Ladies Garment Manufacturer Group of respondent Fashion Originators Guild of America and should it appear upon any hearing that the alleged copyist manufacturer produced and sold the alleged copy at a date prior to the date of registration, it is obligatory upon the Impartial Style Piracy Committee to find that the alleged copy is not a copy. With respect to registration of textiles and other fabrics the procedure varies in details, but is calculated to achieve the same impartial and fair result, the Textile Merchants Group of respondent, Fashion Originators Guild of America, Inc. beg leave to refer in greater detail to the facts with respect thereto upon the hearing of this cause.

PARAGRAPH TWENTY-ONE

Respondent Fashion Originators Guild of America, Inc. affirmatively alleges that no corecion of any kind, nature or description is exercised upon non-members or members. In fact, any member of the respondent, Fashion Originators Guild of America, Inc., may at any time resign from membership therein and pursue such policy as it may desire. In addition, a cooperating retailer or manufacturer may at any time repudiate his representation and discontinue his cooperation. Nor does their cooperation involve the refusal to purchase from the copyist manufacturer any goods except copied merchandise, and except as to

such merchandise the cooperating retailer or manufacturer, as the case may be, may deal with the copyist to such extent as they see fit.

WHEREFORE, the respondents respectfully pray that the complaint herein be dismissed.

(Signed) WEISMAN, QUINN, ALLAN & SPETT,
Attorneys for Respondent, Fashion
Originators Guild of America,
Inc., its respective officers, direc-
tors and members named as re-
spondents herein,

Office & P. O. Address,
1450 Broadway,
Borough of Manhattan,
City of New York.

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(Signed) GOLDWATER & FLYNN,
Attorneys for Respondent, Textile
Merchants Group of Respondent,
Fashion Originators Guild of
America, Inc., its respective offi-
cers, directors and members named
as respondents herein,

Office & P. O. Address,
60 East 42nd Street,
Borough of Manhattan,
City of New York.

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142 **The Answer of Mandel Brothers, Inc., a Delaware Corporation, to the Complaint of Federal Trade Commission.**

(Filed May 8, 1936.)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER

OF

Docket
No. 2769.

143 FASHION ORIGINATORS GUILD OF
AMERICA, INC., et al.

Now comes Mandel Brothers, Inc., respondent in the above entitled cause, and in answer to the complaint filed against said respondent denies that it has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled, "An Act to Create a Federal Trade Commission, to Define its Power and Duties and for other Purposes," and further answering this respondent states as follows with respect to the charges in said complaint made and set forth:

144 Paragraph 1. That so far as this respondent is advised, the allegations of paragraph 1 of said complaint correctly set forth the manner of the organization of the respondent Fashion Originators Guild of America, Inc.

Paragraph 2. As to the allegations contained in paragraphs 2, 3 and 4 of said complaint, this respondent has no knowledge save as derived from the allegations in said paragraphs contained, and therefore neither admits nor denies the same.

Paragraph 3. Answering the allegations of paragraph 5, so far as the same relates to this respondent, respondent admits that it is a Delaware corporation with offices located at 1 North State Street, in the City of Chicago, State of Illinois, owning and operating a department store located in said city, and engaged in the retail sale and distribution of merchandising including ladies' garments; that Edwin F. Mandel is President and Ben. J. Altheimer is Secretary of this respondent, but as to the allegation in said paragraph 5 that this respondent is an affiliated member of respondent Fashion Originators Guild of America, Inc., this respondent denies that it is an affiliated member of said Guild, and alleges to the contrary that its sole relation to said Guild is as set forth in paragraph 6 of this answer.

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Paragraph 4. Further answering, this respondent says that as to the allegations contained in paragraphs 6, 7 and 8, it has no knowledge as to the truth of the allegations in said paragraphs contained other than is derived from said complaint, and therefore neither admits nor denies the same.

Paragraph 5. Answering paragraph 9 of said complaint, this respondent denies that it has at any time entered into an agreement, combination or conspiracy with any of the other respondents in said complaint named, or with any other person, to hinder and suppress or to hinder or suppress competition in the interstate sale and distribution of textile fabrics, to manufacture ladies' and misses' garments, including dresses, suits and coats, or to hinder and suppress or to hinder or suppress competition among said manufacturers of said garments in the interstate sale and distribution of their said products to retail dealers, or to restrain interstate trade in said textile fabrics and garments, or to create a monopoly in the manufacture and interstate sale of said fabrics and said garments in the

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Answer of Respondent Mandel Bros., Inc.

members and affiliated members of the respondent, Fashion Originators Guild of America.

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Paragraph 6. Further answering this respondent says that its only relation to or connection with the Fashion Originators Guild of America is embodied in the "Declaration of Co-Operation in Anti-Piracy" executed by this respondent, a copy of said Declaration being hereto attached, marked Exhibit "A" and made a part hereof, and that this respondent was required so to execute said Declaration as a condition to its right to purchase merchandise from manufacturers affiliated with and members of said Guild; that beyond this relation to and connection with said Guild, this respondent has no interest therein, nor in its actions, nor has it acted in restraint of trade in any manner whatsoever; that this respondent has no representation as a member in nor on the Board of Directors of said Guild, nor has it at any time been consulted prior to any decisions of policy or otherwise made by said Guild, and that its sole information regarding the activities of said Guild has been derived from communications which this respondent has received from the Guild after said Guild has determined its policies.

WHEREFORE, this respondent prays that the complaint filed herein be dismissed as to this respondent.

150

MANDEL BROTHERS, INC.,

By (Signed) LEON MANDEL,
Its Vice-President and General Manager,
1 North State Street,
Chicago, Illinois.

ALTHEIMER, MAYER, WOODS & SMITH,
10 South LaSalle Street,
Chicago, Illinois,
Its Attorneys.

Exhibit A to Answer of Mandel Bros., Inc.

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**DECLARATION OF CO-OPERATION IN ANTI-PIRACY
BETWEEN
MANDEL BROTHERS
(Store's Name)**

AND**THE FASHION ORIGINATORS' GUILD OF AMERICA**

Fashion Originators' Guild of America
512 Seventh Avenue
New York City.

Gentlemen:

We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights of manufacturers in styles created by them and will refuse to countenance so-called "Style Piracy." Believing the principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

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We do not and will not buy for our Ready-to-Wear Departments any copied or pirated dresses of garments created by members of your association.

Furthermore, we will affix to all of our apparel orders the following clause:—

"This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators' Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

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Very truly yours,

By **ALBERT M. POST**
Merchandise Manager
Store Name **MANDEL BROTHERS**

154 Answer for Respondents National Federation of Textiles, Inc., and Peter Van Horn and Irene L. Blunt, Officers Thereof, Named as Respondents.

(Filed May 20, 1936.)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER

OF

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FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.

Docket
No. 2769

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Come now the respondents, National Federation of Textiles, Inc., referred to in the complaint herein as Textiles, Inc., and Peter Van Horn and Irene L. Blunt, President and Secretary, respectively, of said National Federation of Textiles, Inc., and for their answer to the complaint herein and to each and every paragraph thereof separately, first denying, however, jurisdiction on the part of the Federal Trade Commission in respect to the acts alleged in said complaint and that said complaint states facts sufficient to constitute a violation of Section 5 of the Federal Trade Commission Act or states any charges within the meaning of said Act, and reserving the right to move to strike out any one or more of the allegations of said complaint, and denying that these answering respondents have been or now are employing any unfair methods of competition in commerce, say:—

PARAGRAPH ONE:

1. Answering the allegations of the first unnumbered paragraph of Paragraph One of the complaint, respondents, answering hereby, deny knowledge with respect to each and every allegation therein contained, except that respondents admit that the Fashion Originators Guild of America, Inc. is a corporation organized on or about March 7, 1932 under the laws of the State of New York.

2. Answering the allegations of the second unnumbered paragraph of Paragraph One of the complaint, respondents deny knowledge with respect to each and every allegation therein contained, except that respondents admit the following facts: 158

(a) On several occasions written announcements over the name of the Textile Division of the Fashion Originators Guild of America, Inc. have been published, in which it was stated that said Textile Division had designated the Industrial Design Registration Bureau of respondent, National Federation of Textiles, Inc. to handle the registration of designs of certain textile fabrics, to wit, metals, jacquards, laces and embroideries, as well as printed materials;

(b) In two mimeographed notices and in an advertisement published in a newspaper known as Women's Wear daily, which notices and advertisement were addressed primarily to manufacturers and converters of the said textile fabrics over the name of the Industrial Design Registration Bureau of respondent, National Federation of Textiles, Inc., it was stated that the said Industrial Design Registration Bureau had been designated by the Fashion Originators Guild of America, Inc. as the agency to handle registration of designs for the said tex-

160 *Answer of Respondent Nat'l Fed. of Textiles, Inc., et al.*

tile fabrics referred to above, as more fully appears from the photostatic copies of said notices and advertisements which are annexed hereto as Exhibits A, B and C and made a part of this answer;

161 (c) The said announcements referred to above were published after informal discussions and conferences between representatives of respondent, National Federation of Textiles, Inc. and particularly the Committee on Design Registration thereof, and persons purporting to represent the Textile Division of the Fashion Originators Guild of America, Inc., during the year 1935, in which discussions and conferences there was indicated a demand upon the part of textile fabric converters and manufacturers for the extension of the existing facilities of the Industrial Design Registration Bureau to cover registration of the certain textile fabrics named above, in addition to facilities for registration of designs of printed materials already in existence, as more fully set forth and described in paragraph 5(c) of this answer;

162 and respondents further affirmatively allege that the said Industrial Design Registration Bureau of respondent, National Federation of Textiles, Inc. is only a registrar of designs without responsibility or activity other than as set forth and described in paragraph 5 of this answer, and is not now, nor was it ever an agency of respondent, Fashion Originators Guild of America, Inc., nor is there now, nor has there ever been any financial or other connection, affiliation or relationship of any description whatsoever between said Industrial Design Registration Bureau and the said Fashion Originators Guild of America, Inc. or any component group thereof, except as expressly stated and admitted in this paragraph and in paragraphs 5 and 18 of this answer.

PARAGRAPH TWO:

3. Answering the allegations of each and every unnumbered paragraph of Paragraph Two of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH THREE:

4. Answering the allegations of each and every unnumbered paragraph of Paragraph Three of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH FOUR:

5. Answering the allegations of Paragraph Four of the complaint, respondents deny knowledge with respect to each and every allegation therein contained, except that respondents admit the following facts:

(a) The National Federation of Textiles, Inc. is a membership corporation organized under the laws of the State of Connecticut, with its principal office and place of business at 10 East 40th Street, in the City and State of New York, of which Peter Van Horn and Irene L. Blunt are President and Secretary, respectively;

(b) The membership of the National Federation of Textiles, Inc. is made up of manufacturers, converters, dyers, and printers of silk and rayon fabrics located principally in the eastern portion of the United States, varying from time to time in number;

(c) The National Federation of Textiles, Inc. maintains and operates as part of its activities as the active trade association in the silk and rayon industry, a division known as the Industrial Design

Registration Bureau, of which the purposes, objectives, scope of operation and method and effect of operation are briefly and substantially as follows:

Purpose

The purpose of the Industrial Design Registration Bureau is to maintain and conduct a filing and recording bureau and system for the filing and preservation of original designs devised for use in textile fabrics, particularly silks and rayons, to encourage the voluntary filing and recording of such designs with the Bureau, and thereby to avoid the duplication, imitation, simulation and misappropriation of such designs;

Objectives

In maintaining such a Bureau for the filing and recording of textile designs, the Bureau aims to furnish means whereby persons about to introduce or use textile designs may determine with practical certainty whether there is already on the market a design so substantially similar that the average layman purchaser could not readily detect one design from another, and thus to permit such persons introducing such designs to avoid the expense and waste attendant upon the introduction of designs confusingly similar to those already on the market. Duplication of designs, which is inevitable in a highly competitive style industry, results in waste and demoralization throughout the vertical line of the economic structure. In having available a clearing house for designs, such as furnished by the Bureau, the manufacturer and converter of fabrics have some practical assurance that they can develop a style

line of their own in a particular season, without fear of duplication; the garment manufacturer and retailer likewise have assurance that they are not using designs which will conflict with others already in the market; and the consumer may have confidence that the design of piece goods or of the garment purchased will not appear in inferior grades of merchandise. The opportunity for stabilization which such a design clearing house offers begets voluntary cooperation for the common benefit of all concerned.

Scope of Registration.

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The opportunity to file and record designs with the Bureau is and always has been open and available to all persons engaged in the textile industry on the same terms.

Registration has been carried on by the Bureau and its predecessor, the Design Registration Bureau of the Silk Association of America, Inc., since August, 1928. Registration has always been voluntary even with members of the Silk Association of America, Inc. and of the National Federation of Textiles, Inc., of which the Bureau is an integral division, except during the effective period of the Silk Code under the National Recovery Administration Act when registration of certain designs was obligatory for the whole industry.

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From 1928 until late in 1935 registration was limited to designs intended for printing or for jacquard weaving, without tinsel threads. Late in 1935 facilities were made available by the Bureau for the registration of designs in certain fabrics known as laces, embroideries and jacquards, whether with plain or metallic thread,

as well as for designs of printed materials. The introduction of facilities for registration of these last named fabrics resulted from widespread demand by manufacturers and converters for such facilities during the effective period of the Silk Code and following the expiration of the Code. These facilities were set up by the Bureau after numerous informal conferences and discussions between representatives of the Bureau and persons purporting to represent the Textile Division of the Fashion Originators Guild of America, Inc. as to the method and procedure for registration of such fabrics.

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Method and Effect of Registration

Persons seeking to register designs must submit sketches giving an adequate picture of the design with a simple application blank stating essential facts about the owner and the design. The applicant is not required to make any agreement with the Bureau other than to abide by the rules of the Bureau with regard to judgment of designs, including a provision for arbitration; if desired, with the owner of a conflicting or apparently conflicting registered design, and also with regard to fees of the Bureau and the right of the Bureau to cancel registration in certain events, such as failure to process the design within sixty days after registration.

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Designs offered for registration are checked, classified and photostated. The existing files of registered designs are then searched by a trained staff, the basis of judgment as to conflicts being that of possible substitution without detection on the part of the average layman purchaser of any design then registered.

Any registration is subject to cancellation if not processed within sixty days.

The period for which registration is effective is six months for prints and one year for jacquards, laces and embroideries. The period of registration is designed to correspond to the average seasonal life of a design, based on the experience in the industry. Registration also carries with it the privilege of renewal if desired.

Charges of the Bureau for registration are based on cost of administering the registration service.

(d) The Industrial Design Registration Bureau of the National Federation of Textiles, Inc. has been in existence as a division of said Federation from on or about January 1, 1934 and was and is a direct outgrowth of the activities of the Design Registration Bureau of the Silk Association of America, Inc. 176

(e) The Silk Association of America, Inc. is a New York membership corporation, now inactive, and prior to the organization of the National Federation of Textiles, Inc., which succeeded in a large measure to its activities, said Silk Association of America, Inc. was the active trade association in the silk industry.

(f) The Design Registration Bureau of the Silk Association of America, Inc. was set up in or about August, 1928 and functioned actively until the organization of the respondent, National Federation of Textiles, Inc. on or about January 1, 1934; 177

and respondents further affirmatively allege that the said Industrial Design Registration Bureau of the National Federation of Textiles, Inc. is merely a registrar for de-

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signs without responsibility or activity other than as set forth above, and is not now, nor was it ever, an agency of respondent, Fashion Originators Guild of America, Inc., nor is there now, nor has there ever been, any financial or other connection, affiliation or relationship of any description whatsoever between said Industrial Design Registration Bureau and the said Fashion Originators Guild of America, Inc. or any component group thereof, except as expressly stated and admitted in this paragraph and in paragraphs 2 and 18 of this answer.

PARAGRAPH FIVE:

- 179 6. Answering the allegations of each and every unnumbered paragraph of Paragraph Five of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH SIX:

7. Answering the allegations of each and every unnumbered paragraph of Paragraph Six of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH SEVEN:

- 180 8. Answering the allegations of each and every unnumbered paragraph of Paragraph Seven of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH EIGHT:

9. Answering the allegations of each and every unnumbered paragraph of Paragraph Eight of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH. NINE:

10. Answering the allegations of the first unnumbered paragraph of Paragraph Nine of the complaint, respondents deny each and every allegation therein contained.

11. Answering the allegations of the subparagraph (a) of Paragraph Nine of the Complaint, respondents deny knowledge with respect to each and every allegation therein contained.

12. Answering the allegations of the subparagraph (b) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained. 182

13. Answering the allegations of the subparagraph (c) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

14. Answering the allegations of the subparagraph (d) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

15. Answering the allegations of the subparagraph (e) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained. 183

16. Answering the allegations of the subparagraph (f) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

17. Answering the allegations of the subparagraph (g) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

18. Answering the allegations of sub-paragraph (h) of Paragraph Nine of the complaint, respondents deny each and every allegation contained therein except that respondents admit the following facts:

185 (a) On December 17, 1935 respondent National Federation of Textiles, Inc., through its division known as Industrial Design Registration Bureau, mailed two mimeographed notices, and on December 23, 1935, advertised in a newspaper known as Women's Wear Daily, which notices and advertisements were addressed primarily to manufacturers and converters of certain textile fabrics known as metals, jacquards, laces and embroideries, and whose contents appear fully from the photostatic copies thereof which are annexed hereto as Exhibits A, B and C and made a part of this answer;

186 (b) These notices and the said advertisement were published after informal discussions and conferences between representatives of respondent National Federation of Textiles, Inc. and particularly the Committee on Design Registration thereof, and persons purporting to represent the Textile Division of the Fashion Originators Guild of America, Inc., during the year 1935, in which discussions and conferences there was indicated a demand upon the part of the textile fabric converters and manufacturers for the extension of the existing facilities of the Industrial Design Registration Bureau to cover

registration of the certain textile fabrics mentioned in said notices and advertisement, in addition to registration of designs of printed materials already in existence, as more fully set forth and described in paragraph 5 of this answer;

and respondents further affirmatively allege that the said Industrial Design Registration Bureau of the National Federation of Textiles, Inc. is merely a registrar for designs without responsibility or activity other than as set forth above, and is not now, nor was it ever, an agency of respondent, Fashion Originators Guild of America, Inc., nor is there now, nor has there ever been, any financial or other connection, affiliation or relationship of any description whatsoever between said Industrial Design Registration Bureau and the said Fashion Originators Guild of America, Inc. or any component group thereof, except as expressly stated and admitted in this paragraph and in paragraphs 2 and 5 of this answer. 188

19. Answering the allegations of sub-paragraph (i) of Paragraph Nine of the complaint, respondents deny knowledge with respect to each and every allegation therein contained.

PARAGRAPH TEN:

20. Answering the allegations of Paragraph Ten of the complaint, respondents deny each and every allegation therein contained. 189

PARAGRAPH ELEVEN:

21. Answering the allegations of Paragraph Eleven of the complaint, respondents deny each and every allegation therein contained.

190 *Answer of Respondent Nat'l Fed. of Textiles, Inc., et al.*

WHEREFORE, the respondents, answering hereby, respectfully pray that the complaint herein be dismissed.

GLEASON, McLANAHAN, MERRITT & INGRAHAM,
Attorneys for Respondents, National Federation of Textiles, Inc. and Peter Van Horn, President and Irene L. Blunt, Secretary of said Federation,

By (Signed) CHARLES F. BAILEY
(Member of Firm)

Office and Post Office Address,
No. 40 Wall Street,
Borough of Manhattan,
City of New York.

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Exhibit A to Answer of National Federation of Textiles, Inc.

THE INDUSTRIAL DESIGN REGISTRATION BUREAU
10 East 40th Street
New York, N. Y.
Tel. LExington 2-2820

December 17, 1935

192 **TO THE TRADE:**

This Bureau has been designated by the Fashion Originators' Guild as the agency to handle the registration of designs for laces and embroideries as well as metals and Jacquards, selling to the Garment Industry.

The privilege of registering is open to everyone upon identically the same terms. The important factor is the

evidence of coopération being obtained from the garment manufacturer who believes that this policy of registration will benefit the trade and the general public alike.

We are informed by the Fashion Originators' Guild that the dress manufacturers, both members and non-members of the Guild, have pledged themselves in writing to use ONLY the registered designs of these fabrics after January 1, 1936.

You can therefore see the advisability of availing yourself of this service promptly. Both laces and embroideries will be registered for a period of one year at the cost of \$2.00 per design.

NEW OR TO-BE-CONTINUED items should be registered at once on special forms which will be provided upon request. 194

DISCONTINUED items are not to be registered individually but to be recorded on a list, which, with small identifying swatches, is to be sent to this office. This list will be filed as a blanket registration for the single fee of \$2.00. The list will be assigned a registration number although no search will be made as to duplications. However, the number will avoid any difficulties in selling discontinued items to a garment manufacturer, so as to fit in with his pledge to use only registered designs.

In addition, certain designs will be recognized as staples. These include Valenciennes, silk and cotton; Alencons, Lyons and imitation, narrow staple schifflì Venice and real laces. Please send a list of your numbers in these staple classes which will be entered under a blanket registration number at a fee of \$2.00 for the list. Identifying swatches should be affixed to each number on the list. As new laces of the staple types are put into your line, they should be sent to the Bureau for an assignment of number. For each subsequent design so listed and identified, there will be a nominal charge of 50¢. 195

Well established principles of the Bureau for acceptance or rejection with which you are familiar will be employed in this case.

196 *Answer of Respondent Nat'l Fed. of Textiles, Inc., et al.*

Any other information will be gladly given upon communication with either the Fashion Originators' Guild or this Bureau.

Yours very truly

(Signed) I. L. BLUNT
Director.

ILB:DSS

A DIVISION OF THE NATIONAL FEDERATION OF TEXTILES, INC.

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Exhibit B to Answer of National Federation of Textiles, Inc.

THE INDUSTRIAL DESIGN REGISTRATION BUREAU

10 East 40th Street

New York, N. Y.

Tel. LExington 2-2820

December 17, 1935

TO THE TRADE:

This Bureau has been designated by the Fashion Originators' Guild as the agency to handle the registration of designs for laces, metals and Jacquards, selling to the Garment Industry.

198

The privilege of registering is open to everyone upon identically the same terms. The important factor is the evidence of cooperation being obtained from the garment manufacturer who believes that this policy of registration will benefit the trade and the general public alike.

We are informed by the Fashion Originators' Guild that the dress manufacturers, both members and non-members of the Guild, have pledged themselves in writing to use ONLY the registered designs of these fabrics after January 1, 1936.

You can therefore see the advisability of availing yourself of this service promptly. Both metallic fabrics and Jacquards will be registered for a period of one year at the cost of \$4.00 per design.

NEW OR TO-BE-CONTINUED items should be registered at once on special forms which will be provided upon request.

DISCONTINUED items are not to be registered individually but to be recorded on a list, which with small identifying swatches, is to be sent to this office. This list will be filed as a blanket registration for the single fee of \$4.00. The list will be assigned a registration number although no search will be made as to duplications. However, the number will avoid any difficulties in selling discontinued items to a garment manufacturer, so as to fit in with his pledge to use only registered designs.

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Well established principles of the Bureau for acceptance or rejection with which you are familiar will be employed in this case.

Any other information will be gladly given upon communication with either the Fashion Originators' Guild or this Bureau.

Yours very truly

(Signed) I. L. BLUNT
Director.

ILB:DSS

201

A DIVISION OF THE NATIONAL FEDERATION OF TEXTILES, INC.

202

Exhibit C to Answer of National Federation of Textiles, Inc.

WOMEN'S WEAR DAILY, MONDAY, DECEMBER 23, 1935

Section 2 3

ATTENTION!

MANUFACTURERS AND CONVERTERS

of

**Metals, Jacquards, Laces and Embroideries
for the Garment Industry**

203

Your customers—the garment manufacturers—both members and non-members of the Fashion Originators' Guild of America, Inc., have forwarded to the Guild offices written pledges to use **ONLY REGISTERED DESIGNS** in the above fabrics on and after January 1, 1936.*

The privilege of registering designs in the above fabrics is open to all manufacturers and converters upon identically the same terms.

Registration will be handled by the Design Registration Bureau at 10 East 40th Street and proper forms will be supplied you upon request.

204

It is important that you have all your present designs registered at once and subsequent designs sent for registration before offering them for sale in order that you may stamp or print upon your orders and your bills a statement assuring the trade that all the designs are registered.

In order that the garment manufacturers may be certain they are buying only registered designs, they will require such assurance to be stamped or printed upon the bills accompanying the merchandise on and after January 1, 1936.

As you know, one of the foundation stones of the Fashion Originators' Guild of America is the establishment of means for protection of style and design in the

interests of manufacturer, retailer and the general public alike. As evidence of cooperation and the belief that this policy is for the benefit of both the trade and general public, the dress manufacturers, members and non-members of the Guild as well, have pledged themselves to use only the registered designs of these fabrics after January 1, 1936. Accordingly, manufacturers of such fabrics should avail themselves of this service promptly.

Provision has been made to issue to each firm one blanket registration number to cover all discontinued designs and all on-hand staples. This provision and all other information will be explained to you, if you will communicate with either the Fashion Originators' Guild of America, Inc., 512 Seventh Avenue, New York City, or the

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INDUSTRIAL DESIGN REGISTRATION BUREAU
NATIONAL FEDERATION OF TEXTILES, INC.
10 East 40th Street, New York City
Telephone LExington 2-2820

* The pledge also covers dress prints which have been registerable for several seasons.

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**Motion and Answer of J. L. Hudson Company to
Complaint.**

(Filed May 20, 1936.)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF
AMERICA, INC., et al.

Docket
No. 2769

209

Comes now J. L. Hudson Company, a Michigan corporation, one of the respondents herein, and, without waiving its motion attached hereto, for answer to the complaint herein and to each paragraph thereof separately, says:

PARAGRAPHS ONE TO FOUR, INCLUSIVE. That respondent has not sufficient information to form a belief as to matters contained in Paragraphs One, Two, Three, and Four of the complaint.

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PARAGRAPH FIVE. That respondent has not sufficient information to form a belief as to the allegations contained in Paragraph Five, excepting that it denies that it is an affiliated member of the respondent F.O.G.A., denies that it has ever used any unfair methods of competition, denies that it at any time entered into any agreement, combination or conspiracy, for the purpose of hindering or suppressing competition, either local or interstate, denies that it did create or take part in the creating of any monopoly in the manufacturing and sale of fabrics, dresses, or otherwise, and denies that it ever did any wrongful act in connection with the instant matter, but admits that it did

participate in the Guild's plan to the extent and in the manner stated herein, affirmatively, in Paragraph Twelve hereof.

PARAGRAPHS SIX TO EIGHT, INCLUSIVE. Respondent has not sufficient information or knowledge to form a belief as to the allegations contained in Paragraphs Six, Seven, and Eight of the complaint.

PARAGRAPH NINE. Answering Paragraph Nine of the complaint this respondent denies that it has ever been an affiliated member of the said F.O.G.A., but admits it did sign a "Declaration of Cooperation," as is more fully set forth in Paragraph Twelve hereof, and alleges that since the latter part of February, 1936, the said "Declaration of Cooperation" was withdrawn and all relations thereunder ceased; as hereinafter more fully set forth in the said Paragraph Twelve. That your respondent has not sufficient information to form a belief as to the further allegations set forth in Paragraph Nine, excepting as follows:

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(b) It believes the matters set forth in Sub-Paragraph (b) to be true.

(c) It believes the matters set forth in Sub-Paragraph (c) to be true.

(d) It believes the matters set forth in Sub-Paragraph (d) to be true excepting that the Textile Merchants Group to its knowledge has not refused to sell fabrics to blacklisted retailers.

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(e) It believes the matters set forth in Sub-Paragraph (e) to be true.

(f) It has not sufficient information to form a belief as to the other allegations contained in Sub-Paragraphs (f), (g) and (h), but has been informed that there are cer-

tain agreements, contracts, rules and regulations governing the conduct and relation of the groups mentioned therein, all of which facts can best be ascertained by an examination of the record with respect thereto.

PARAGRAPH TEN. That for lack of information sufficient to form a belief, it neither admits nor denies the allegations contained in Paragraph Ten excepting as follows:

(b) It believes the allegations stated in Sub-Paragraph (b) to be true.

(c and e) It believes that the tendency of the plan is to bring about the conclusions set forth in Sub-Paragraph (c) and (e).

PARAGRAPH ELEVEN. That it believes the allegations of Paragraph Eleven to be true so far as F.O.G.A. is concerned, but alleges that it did not knowingly commit nor consent to the commission of any actions to the prejudice of the buying public.

PARAGRAPH TWELVE. AFFIRMATIVE STATEMENT OF FACTS:

(A) Respondent alleges that in 1933, due to the activities of the said Guild, it found itself unable to purchase certain dresses essential to its business unless it executed a so-called "Declaration of Cooperation" of said Guild. That as a result it was forced to execute the same, a true copy being attached hereto as Exhibit A. That thereafter, and while its said "Declaration" was on file with said Guild, it did unsuccessfully object from time to time to certain actions of said Guild. That it did not have the right to and did not attend any of the Guild's meetings, nor vote thereat, nor take any part in the management of the Guild. That it at no time agreed to the blacklisting of any member or non-member, nor to any of the other

matters complained of in the Complaint. That a few days after February 14, 1936, and without any warning from the Guild, it received a letter from the Guild dated February 14, 1936, returning to it the aforesaid "Declaration of Cooperation." That at the same time and without any warning the F.O.G.A. blacklisted or "red carded" this respondent. After the receipt of the said letter of February 14, 1936, this respondent consulted with its counsel for the first time regarding said F.O.G.A. Counsel advised that the plan of F.O.G.A. was probably illegal. That under date of February 27, 1936, respondent mailed to F.O.G.A. a letter reading as follows:

"Since the receipt of your letter of February 14th, we have given the matter of our cooperation with the Guild careful consideration, especially in the light of the recent developments. The result is that we do not desire to further cooperate with the Guild.

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"If your aforementioned letter did not have the effect of severing our relationship completely, please consider this letter as doing so."

No reply was received by this respondent to its said letter of February 27, 1936.

That your respondent prior to the signing of the "Declaration of Cooperation", heretofore mentioned, was informed by representatives of the Guild that it was the purpose of the Guild to attempt to eliminate copying in the higher price lines of dresses, specifically, to prevent copying of dresses selling at wholesale at \$16.75 and upwards, and that the protection of these styles was to extend only down to dresses manufactured at \$10.75, wholesale. That your respondent had no thought or knowledge that the Guild reserved the right to extend its activities into the lower price lines, if it so determined, and to control certain trade practices which from time to time it might consider desirable.

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Subsequent to the signing of the "Declaration of Cooperation" by your respondent the F.O.G.A. announced that it had determined to extend its control to the very lowest price lines and that thereafter all "copies", at whatever price purchased, must be returned to the manufacturer by the retailer who had signed the "Declaration of Cooperation". This action of the Guild was a tremendous handicap to those retailers who signed the "Declaration of Cooperation" in competition with those retailers who refused to sign such "Declaration of Cooperation" because of the fact that the type of business of the latter did not make it essential for them to purchase from Guild members since they dealt solely in the lower price lines. Such non-cooperating retailers can and do purchase any lower-price-range dresses which they desire and sell the same without any control whatever by the Guild, and there was every indication of definite damage to respondent's business and increasing difficulty for cooperating retailers to maintain their position in the competitive field of the lower price dresses, and your respondent, as well as other retailers, protested vigorously to the Guild with respect to the Guild's activities in attempting to control the lower price lines but without avail.

(B) That an extremely small proportion, if any, of respondent's business is in interstate commerce.

(C) That a large amount of goods heretofore sold to respondent by members of F.O.G.A. while respondent's "Declaration of Cooperation" was on file with the said F.O.G.A. was shipped to it in interstate commerce.

(D) That the action of F.O.G.A. in trying to control lower and lower price lines in dress manufacturing, particularly beginning in 1935, indicated a probability of definite damage to respondent's business and increasing difficulty for consumers to secure style right and value right garments of the low price lines. As a result respondent protested to the Guild as early as the fall of 1935.

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E) That between January 1, 1936, and February 15, 1936, respondent placed substantial orders for dresses in various price lines with a large number of manufacturers who were members of F.O.G.A., in most instances the orders so placed with said members being the vast majority of dresses in such price lines purchased by respondent.

F) That subsequent to respondent being blacklisted as hereinbefore set forth, it was refused merchandise by all of the many members of the said Guild its buyers approached. In addition, at the time of said blacklisting respondent had over Ten Thousand Dollars in merchandise on order with F.O.G.A. members, some of which merchandise was then past due and some finished and ready for delivery, but all of which the said members to respondent's damage refused to deliver, respondent is indebted, on orders from the said F.O.G.A. Respondent alleges that in giving such orders to the members, F.O.G.A. has no reasons therefor.

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G) That the continued refusal of members of F.O.G.A. to sell to respondent has affected respondent's business in various ways to its damage, amongst others as follows:

a) It was unable to supply customer demand for men's and Misses' Fox-trimmed Costume Suits wholesaling from \$49.50 to \$98.50 inasmuch as no houses could be found outside the members of F.O.G.A. manufacturing that type of merchandise.

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b) It is unable to supply customer demand with as complete selections of Misses' Street Dresses wholesaling at \$14.75 and Women's Street Dresses wholesaling at \$19.75 as its business requires due to the fact that manufacturers outside the F.O.G.A. members do not make desirable merchandise and are not as well equipped from a production standpoint.

(c) Respondent was forced to seek new sources for its Women's Daytime Dress Department from \$15.75 to \$39.75 wholesale cost, the action on the part of the F.O.G.A. making it necessary for respondent to experiment with resources theretofore untried by it and of doubtful adequacy both as to values and ability to produce.

(d) For its Misses' Daytime Dress Department from \$16.75 to \$39.75 wholesale cost, respondent has been unable to maintain satisfactory selections since its said black-listing, for the reason that F.O.G.A. controls a very large proportion of the output of this kind of merchandise.

227. (e) In its Sportswear Department respondent has been forced to give up a large number of its regular resources and to try new houses. It has been unable to get as good golf dresses. It has been severely handicapped as well in other types of sport dresses from \$10.75 wholesale cost up.

(H) That the activities of F.O.G.A. members, other than the said refusal to sell, have interfered with the respondent's business to its damage in various ways in which the following is an example: F.O.G.A. requested and attempted to force respondent to return active selling dresses at very popular prices (dresses which it claimed were copies) when these same dresses were selling freely in the stores of its competitors and which stores F.O.G.A. was unsuccessful in controlling.

(I) That F.O.G.A. members are an essential source of supply to respondent because as a group and from a fashion and production standpoint they comprise the most important houses in all markets where medium and higher priced dresses are obtainable. In the case of Junior dresses at a cost of \$10.75 up, Misses' Street dresses from \$16.75 cost up, and Women's and Misses' Costume Suits from \$49.75 wholesale cost up F.O.G.A. controls so high

a percentage of the entire production that respondent finds it impossible to buy this class of goods in sufficient quantities elsewhere to provide proper assortments of satisfactory merchandise.

WHEREFORE, this respondent prays that the complaint be dismissed as to it.

MOTION.

That due to the fact that this respondent's "Declaration of Cooperation" has not been on file with the said Fashion Originators Guild of America, since February, 1936, as is fully set forth in its answer, and inasmuch as respondent will not again, unless a legal program is worked out, sign a "Declaration of Cooperation" with the Guild, nor in any other way further the said Guild, respondent prays that it may be dismissed from this cause. 230

J. L. HUDSON COMPANY;

By (Signed) OSCAR WEBBER,
Its Vice-Pres. & Genl. Mgr.,
Detroit, Michigan.

(Signed) BEAUMONT, SMITH & HARRIS,
2900 Union Guardian Building,
Detroit, Michigan,
Attorneys for J. L. Hudson Company.

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(Signed) ALBERT E. MEDER,
2900 Union Guardian Building,
Detroit, Michigan,
Of Counsel.

232 **Exhibit A to Motion and Answer of J. L. Hudson Co.**
FASHION ORIGINATORS' GUILD OF AMERICA, INC.
 512 Seventh Avenue,
 New York City, N. Y.

**DECLARATION OF CO-OPERATION IN ANTI-PIRACY BETWEEN
 THE J. L. HUDSON COMPANY AND THE FASHION
 ORIGINATORS' GUILD OF AMERICA**

Fashion Originators' Guild of America
 512 Seventh Avenue
 New York, N. Y.

Gentlemen:

233 We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights of manufacturers in styles created by them and will refuse to countenance so-called "Style Piracy." Believing the principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

We do not and will not buy for our Ready-to-Wear Departments any copied or pirated dresses of garments created by members of your association.

Furthermore, we will affix to all of our apparel orders the following clause:

234 "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators' Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

Very truly yours,

(Signed) G. R. MACDONALD
 THE J. L. HUDSON COMPANY,
 Basement Store

(Signed) L. B. SAPPINGTON
 J. L. Hudson Company

**Order Appointing Examiner and Fixing Time and
Place for Taking Testimony.**

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UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 12th day of June, A. D. 1936.

COMMISSIONERS: CHARLES H. MARCH, Chairman,
GARLAND S. FERGUSON, JR.,
EWIN L. DAVIS,
WILLIAM A. AYRES,
ROBERT E. FREER.

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IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.

Docket
No. 2769

237

This matter being at issue and ready for the taking of testimony,

IT IS ORDERED that John W. Bennett, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

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Order Appointing Examiner.

IT IS FURTHER ORDERED that the taking of testimony in this proceeding begin on Wednesday, July 15, 1936, at nine o'clock in the forenoon of that day. (eastern standard time), in room 901, 45 Broadway, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

BY THE COMMISSION:

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(Seal)

OTIS B. JOHNSON,
Secretary.

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**Substitute Order Appointing Examiner and Fixing
Time and Place for Taking Testimony.** 241

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of October, A. D. 1936.

COMMISSIONERS: CHARLES H. MARCH, Chairman,
GARLAND S. FERGUSON, JR.;
EWIN L. DAVIS,
W. A. AYRES,
ROBERT E. FREER.

242

IN THE MATTER

OF

FASHION ORIGINATORS' GUILD, INC.

Docket
No. 2769

WHEREAS, John W. Bennett, an examiner of this Commission, was heretofore appointed to take testimony and receive evidence in this proceeding, pursuant to authority vested in the Federal Trade Commission under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41), and whereas, there are hearings scheduled in the above proceeding, beginning on Monday, November 9, 1936, at ten o'clock in the forenoon of that day, in room 401, Appraisers Store, Federal Building, Baltimore, Maryland, and whereas, the said John W. Bennett because of illness will be unable to continue therein, 243

IT IS, THEREFORE, ORDERED that Edward M. Averill, an examiner of this Commission, be and he hereby is design-

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Substituted Order Appointing Examiner.

nated and appointed to take testimony and receive evidence in this proceeding in the place and stead of John W. Bennett heretofore appointed.

BY DIRECTION OF THE COMMISSION:

OTIS B. JOHNSON,

(Seal)

Secretary.

**Substitute Order Appointing Examiner and Fixing
Time and Place for Taking Testimony.**

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UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of September, A. D. 1937.

COMMISSIONERS: WILLIAM A. AYRES, Chairman;
GARLAND S. FERGUSON, JR.,
CHARLES H. MARCH,
EWIN L. DAVIS,
ROBERT E. FREER.

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IN THE MATTER
OF
FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.

Docket
No. 2769

WHEREAS, Edward M. Averill was heretofore appointed to take testimony and receive evidence in this proceeding,

Substituted Order Appointing Examiner.

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pursuant to authority vested in the Federal Trade Commission under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41), and whereas he is now deceased,

IT IS ORDERED that Charles F. Diggs, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding, beginning on Monday, September 20, 1937, at ten o'clock in the forenoon of that day (eastern standard time), in room 424, 815 Connecticut Avenue, N.W., Washington, D. C.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

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BY THE COMMISSION:

OTIS B. JOHNSON,

(Seal)

Secretary.

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84-104

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Motion to Dismiss Complaint on the Merits as Against 313
Respondent The National Federation of Text-
iles, Inc., and the Officers Thereof
Named as Respondents.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF
 AMERICA, INC., et al.

Docket
 No. 2769

314

COME NOW respondent, The National Federation of Textiles, Inc., and the officers thereof named as respondents, by their attorneys, McLanahan, Merritt & Ingraham, and move the Commission that the complaint herein be dismissed on the merits as against said respondents upon the complaint, respondents' answer thereto, the testimony herein, the Trial Examiner's report upon the facts, respondents' exceptions to said report, and upon all the proceedings heretofore had and filed herein.

This motion is made upon the following grounds:

1. That there is a failure of proof of the material allegations of said complaint with respect to said respondents.

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2. That there is no direct proof that said respondents were parties to the agreement, combination and conspiracy alleged in the complaint herein and that the sole act charged against said respondents in the complaint, to wit, that The Industrial Design Registration Bureau of respondent, The National Federation of Textiles, Inc., advertised and solicited the registration of designs of textile fabrics on the ground that it had been designated as the

agency to handle the registration of designs of textile fabrics for members of the respondent F.O.G.A., does not justify the inference attempted to be drawn that said respondents were parties to the agreement, combination and conspiracy alleged in the complaint.

3. That the said act of respondents, the facts concerning which are fully set forth and admitted in their answer to the complaint, was confined to a period of one week in December, 1935, and that thereafter said advertising and solicitation ceased long before the issuance of the complaint herein and there is no reason to apprehend the renewal thereof; and that, under the circumstances, therefore, the Commission is not justified in issuing a Cease and Desist Order against these respondents.

Respondents respectfully request the Commission to set the time and place for argument of this motion to dismiss on Wednesday, September 21, 1938, at 2:00 P. M., in the Hearing Room, Federal Trade Commission Building, Washington, D. C., said time and place being that set for the final argument in this matter.

WHEREFORE, it is prayed that this Honorable Commission grant this motion to dismiss the complaint on the merits against the undersigned respondents.

Respectfully submitted,

• Dated: September 15th, 1938.

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McLANAHAN, MERRITT & INGRAHAM,
Attorneys for the respondent, The National
Federation of Textiles, Inc., and the officers thereof named as respondents,

By ROBT. McLANAHAN

(Member of firm),

Office and P. O. Address,

No. 40 Wall Street,

Borough of Manhattan,

New York City.

Findings of Fact and Conclusions of Law.

319

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of February, A. D. 1939.

COMMISSIONERS: ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYERS.

320

IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members.

Docket
No. 2769

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 16, A. D. 1936, issued and served its complaint in this proceeding upon the respondents specifically named in the caption hereof and upon the various corporations and individuals named as respondents in the body of the complaint, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other

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evidence in support of the allegations of the complaint were introduced by Reuben J. Martin and Everett F. Haycraft, attorneys for the Commission, and in opposition to the allegations of the complaint by Milton C. Weisman and M. A. Albert, attorneys for the respondent, before John W. Bennett, Edward M. Averill and Charles F. Diggs, respectively, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answers thereto, the testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH ONE: Respondent Fashion Originators Guild of America, Inc., hereinafter for convenience referred to as "F.O.G.A.", is a membership corporation composed of manufacturers of women's garments and of textiles used in the manufacture thereof. It was incorporated under the laws of the State of New York on March 7, 1932, and its principal office and headquarters are located in the City and State of New York. The following-named persons were officers and members of respondent's board of governors as of April 16, 1936:

OFFICERS

Maurice Rentner	—	President and Treasurer
Herbert Sondheim	—	First Vice-President
Charles Gumprecht	—	Second Vice-President
J. A. Livingston	—	Treasurer
Albert M. Post	—	Executive Director
James M. Golby	—	Executive Secretary

BOARD OF GOVERNORS

Dress Division

William Bass	—	David Bender
Louis J. Brenner	—	Theodore Racoonin
Jo Copeland	—	Charles Lang
Charles Gumprecht	—	William Fox
Samuel Kass	—	Herbert Sondheim
Maurice Rentner	—	Joseph Halpert
D. Eli Lahm	—	Charles Miller

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Coat Division

Louis M. Wersba	—	Kallman Carmel
Leo Del Monte		(alternate)

Junior Miss Division

Louis J. Mallas

Sports Wear Division

J. A. Livingston	—	David M. Goodstein
Matthew Kane		(alternate)

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Austin M. DeLisser is the executive secretary of the Textile Merchants' Group of the F.O.G.A. This group has no board of governors, but has a steering committee which performs the same functions, and

G. H. Conze	—	E. W. Freudenberg
Samuel Levine	and	E. E. Meyer

are or have been members of this committee.

On April 16, 1936, the F.O.G.A. had two hundred and twenty-five members, whose names, classifications and addresses are as follows:

DRESS MEMBERS

- Aldrich & Malvin, Inc., 530 Seventh Avenue
 Milton Altmark, Inc., 530 Seventh Avenue
 Charles Armour & Bros., Inc., 498 Seventh Avenue
 Arons, Bernstein & Arons, Inc., 530 Seventh Avenue
 Joseph & Ben Barnett, Inc., 498 Seventh Avenue
 Rose Barrack & Lahm, Inc., 530 Seventh Avenue
 William Bass Dress Corp., 550 Seventh Avenue
 329 Herman Beispel, Inc., 530 Seventh Avenue
 Bender & Hamburger, Inc., 530 Seventh Avenue
 Blotta & Conti, Inc., 498 Seventh Avenue
 Brenner, Joseph, & White, 30 West 47th Street
 Brenner, Morris, Inc., 55½ Columbia
 Hattie Carnegie, Inc., 42 E. 49th Street
 Clifford Salkin, Inc., 530 Seventh Avenue
 Lewis Cohn, Inc., 530 Seventh Avenue
 Jo Copeland, Inc., 15 W. 47th Street
 David Crystal, Inc., 498 Seventh Avenue
 Dolces Dressing, Inc., 530 Seventh Avenue
 Anna Duke, Inc., 498 Seventh Avenue
 Etc. Inc., 38 W. 47th Street
 Feigenbaum & Adelsohn, Inc., 530 Seventh Avenue
 330 Pauline Fields, Inc., 498 Seventh Avenue
 Herman Floersheimer & Bro., Inc., 550 Seventh Avenue
 Louise Barnes Gallagher, Inc., 37 W. 47th Street
 Henry Ganz, Inc., 550 Seventh Avenue
 Gardner & Schwartz, Inc., 498 Seventh Avenue
 Garfinckel & Siegel, Inc., 550 Seventh Avenue
 Ed. Garrick & Co., Inc., 550 Seventh Avenue
 A. Goodman & Co., Inc., 530 Seventh Avenue
 Joseph Greenberg-Bettina, Inc., 550 Seventh Avenue

Charles Groden, Inc., 20 West 56th Street
 Julius Grossman & Fred Greenberg Dress Co., Inc., 550
 Seventh Avenue

Joseph Halpert, Inc., 530 Seventh Avenue
 Max Heit Dress Corp., 478 Seventh Avenue
 Myron Herbert & Charles Cooper, Inc., 498 7th Avenue
 Jack Herzog & Bro., Inc., 530 Seventh Avenue
 Virginia Hume & Gold, Inc., 498 Seventh Avenue
 E. A. Jackson-Bienard, Inc., 550 Seventh Avenue
 Kallman & Morris, Inc., 530 Seventh Avenue
 Kaplan & Moskowitz, Inc., 498 Seventh Avenue
 Samuel Kass Gowns, Inc., 498 Seventh Avenue
 Kiviette, Inc., 37 W. 47th Street

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Charles Kondazian & Papaz, Inc., 37 W. 47th Street
 Kornhauser Gowns, Inc., 498 Seventh Avenue
 Charles Lang, Inc., 498 Seventh Avenue
 La Rue Dresses, Inc., 550 Seventh Avenue
 Lenkowsky Modes, Inc., 550 Seventh Avenue
 Marry Lee Frocks, Inc., 498 Seventh Avenue
 Mary Liotta, Inc., 37 W. 47th Street
 M. A. Litvin, Inc., 498 Seventh Avenue
 H. Milgrim & Bros., Inc., 6 W. 57th Street
 Germaine Monteil, Inc., 36 W. 47th Street
 Jennie Moskowitz, Inc., 550 Seventh Avenue
 Nanty Frocks, Inc., 36 W. 47th Street
 Nomis Dress Co., Inc., 498 Seventh Avenue

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Paul Parnes, Inc., 498 Seventh Avenue
 Pattulo Modes, Inc., 1 W. 47th Street
 Perles & Gilbert, Inc., 530 Seventh Avenue
 Ben Reig, Inc., 498 Seventh Avenue
 Maurice Rentner, Inc., 498 Seventh Avenue
 Nettie Rosenstein Gowns, Inc., 36 W. 47th Street
 James J. Rothenberg, Inc., 550 Seventh Avenue
 Rudolf Gowns, Inc., 520 Seventh Avenue
 Ruffolo Bros., Inc., 31 W. 47th Street
 J. M. Silverman Dresses, Inc., 498 Seventh Avenue

Somay, Inc., 530 Seventh Avenue
 Herbert Sondheim, Inc., 530 Seventh Avenue
 Spectator Sports, Inc., 15 W. 47th Street
 Frank Starr Friedlander, Inc., 530 Seventh Avenue
 Straus-Miller, Inc., 498 Seventh Avenue
 Suttre-Fox, Inc., 498 Seventh Avenue
 A. Traina Gowns, Inc., 550 Seventh Avenue
 John Traina, Inc., 530 Seventh Avenue

(All of the above are located in the
 City and State of New York).

AFFILIATED MEMBERS

B. G. Garment Co., Inc., 337 S. Franklin St., Chicago, Ill.
 Fred A. Block, Inc., 325 W. Jackson St., Chicago, Ill.
 S. Eisenberg, 106 Fifth Ave., New York, N. Y.
 H. N. Fried, 337 S. Franklin St., Chicago, Ill.
 Junior Guild Frocks, Inc., 1372 Broadway, New York, N. Y.
 Lang-Kohn Mfg. Co., 525 Seventh Ave., New York, N. Y.
 Matthew Kadetsky Co., 530 Seventh Ave., New York, N. Y.
 Robinson Bros., Inc., 550 Seventh Ave., New York, N. Y.

COAT AND SUIT MEMBERS

Carmel Bros., Inc., 530 7th Ave., New York, N. Y.
 Dartmoor Coat Co., Inc., 1384 Broadway, New York, N. Y.
 Deutsch-Wersba & Coppola, Inc., 512 7th Ave., New York,
 N. Y.
 Del Monte Hickey Co., Inc., 205 W. 39th St., New York,
 N. Y.
 Ben Gershel & Co., Inc., 512 7th Ave., New York, N. Y.
 Ben Ginsburg, Inc., 500 7th Ave., New York, N. Y.
 Aaron Goldstein Co., Inc., 530 7th Ave., New York, N. Y.
 Louis Goldstein Company, Inc., 512 7th Ave., New York,
 N. Y.
 Grossman & Spiegel, Inc., 512 7th Ave., New York, N. Y.
 Philip Mangone & Co., Inc., 500 7th Ave., New York, N. Y.

Monte, Sans & Pruzan, Inc., 21 W. 46th Street, New York,
N. Y.

Zuckerman & Kraus, Inc., 512 7th Ave., New York, N. Y.

JUNIOR MISS MEMBERS

Louis Kallish and Max Rosenbluth (copartners trading as
Arkay Junior Frocks), 498 Seventh Avenue

Ashley Frocks, Inc., 1400 Broadway

J. H. Horwitz and Joseph M. Duberman (copartners trad-
ing as Horwitz & Duberman), 498 7th Avenue

Jane Junior Dresses, Inc., 1400 Broadway

Joanne, Jr., Zinn Bros., Inc., 1400 Broadway

Junior League Frocks, Inc., 1372 Broadway

Louise Mulligan, Inc., 498 Seventh Avenue

Ira Rentner-Miller, Inc., 498 Seventh Avenue

(All of the above are located in New York, N. Y.)

TEXTILE ASSOCIATES

Amrein, Freudenberg & Co., Inc., 14 E. 38th Street

Bianchini, Ferrier, Inc., 663 Fifth Ave.

Bloomsburg Silk Mill, Inc., 525 Seventh Ave.

Sidney Blumenthal & Co., Inc., 1385 Broadway

Brueck & Richards, Inc., 280 Madison Ave.

Case & Co., Inc., 220 W. 40th St.

Chatillon, Mouly, Roussel, Inc., 608 Fifth Ave.

Cheney Bros., Inc., 1412 Broadway

Combier & Co., Inc., 58 W. 40th Street

Coudurier, Frustus & Devigne, Inc., 1441 Broadway

Descours, Genthen, Inc., 58 W. 40th Street

Croydon Fabrics, Inc., 1441 Broadway

Silk Guild of America, Inc., 1441 Broadway

F. Ducharme Silk Co., Inc., 244 Madison Ave.

Empire Silk Co. (Incorporated), 180 Madison Ave.

Cohn Hall-Marx Co., Inc., 1412 Broadway

The Forstman Woolen Co. (Incorporated), 350 Fifth Avenue

Frank Associates, Inc., 1412 Broadway

Theodore J. Gallagher, Inc., 58 W. 40th Street

Hess, Goldsmith & Co., Inc., 1400 Broadway

L. J. Hyams & Jane Hyams (copartners), 108 W. 39th Street

Kandelaft Silks, Inc., 1441 Broadway

Lace Net Importing Co., Inc., 244 Madison Ave.

Maginnis & Thomas, Inc., 411 Fifth Ave.

H. B. Mahinson & Co., Inc., 119 W. 40th Street

Menke Kaufman & Co., 119 W. 40th Street

341 Onondaga Silk Co., Inc., 1412 Broadway

Wm. C. Openhym, 1441 Broadway

Remond-Holland, Inc., 663 Fifth Ave.

L. & E. Stirn, Inc., 1400 Broadway

Stunzi Sons Silk Co., Inc., 1400 Broadway

Susquehanna Silk Mills (Inc.), 498 Seventh Ave.

Schwarzenbach, Huber, Inc., 498 Seventh Ave.

J. A. Wagenbauer, Inc., 545 Fifth Ave.

Wahnetah Silk Co., Inc., 119 W. 40th St.

Wechaler Silk Corp., 498 Seventh Ave.

Zellinger & Schreth, Inc., 50 W. 40th St.

J. J. & N. Blackstone, Inc., 58 W. 40th St.

Dutschler, Trull & Justin, Inc., 570 Seventh Ave.

Ellen Lace & Embroidery Co., Inc., 1441 Broadway

342 L. H. Hollander, 101 W. 37th St.

Ikle Freres & Co., Inc., 22 W. 38th St.

Herbert Lehman, Inc., 47 W. 34th St.

Lido Embroidery, Inc.

Maison France, Inc., 101 W. 37th St.

Record Lace & Embroidery Co., Inc., 1270 Broadway

Swiss Novelty Embroidery Co., Inc., 108 W. 39th St.

Walter Tobler & Franz Hoenig (copartners), 250 W. 40th St.

Sol Wolfman, Inc., 1457 Broadway

SPORTS WEAR MEMBERS

Adler & Adler, Inc., 550 Seventh Ave.
 Davidow, Inc., 550 Seventh Ave.
 David M. Goodstein, Inc., 550 Seventh Ave.
 Kane-Weill, Inc., 498 Seventh Ave.
 Joseph Levay, Inc., 498 Seventh Ave.
 J. A. Livingston, Inc., 498 Seventh Ave.
 David N. Lowenthal & Son, Inc., 550 Seventh Ave.
 Mutual Rosenbloom Corp., 498 Seventh Ave.
 Charles W. Nudelman, Inc., 550 Seventh Ave.
 Zoltan Rosenberg & Theodore Rosenberg (copartners),
 550 Seventh Ave.

Sport Craft Inc., 1350 Broadway
 Star M Dresses, Inc., 498 Seventh Ave.
 Sam Steilberg & Co., Inc., 498 Seventh Ave.
 Townley Frocks, Inc., 498 Seventh Ave.

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(All of the above-named are located in New York, N. Y.)

PROTECTIVE AFFILIATES

Aywon Dress Co., Inc., 1400 Broadway
 L. & D. Beilinson, Inc., 1400 Broadway
 Daytime Frocks, Inc., 525 Seventh Ave.
 F.E.D. Dress Co., Inc., 1400 Broadway
 Harry Frank, 1400 Broadway
 Friedman Dress Co., Inc., 1400 Broadway
 Goldman Frocks Co., Inc., 1400 Broadway
 International Dress Co., Inc., 1400 Broadway
 Jomark Dresses, Inc., 1400 Broadway
 Joe Levine Dress Co., Inc., 1400 Broadway
 Parisian Mfg. Co., Inc., 1400 Broadway
 C. H. D. Robbins Co., Inc., 1375 Broadway
 Rosen Bros. Frocks, Inc., 1400 Broadway
 Sheila Lynn Dresses, Inc., 1400 Broadway
 Silver Dresses, Inc., 1400 Broadway
 David S. Westheim Corp., 1400 Broadway

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- Witlin & Schneider, Inc., 1400 Broadway
 Alderman-Bob Burns, Inc., 1385 Broadway
 Bernard Appel, Inc., 498 Seventh Ave.
 Grace Ashley, 743 Fifth Ave.
 Bon-Ray Dance Frocks, Inc., 134 W. 37th St.
 Capri Frocks, Inc., 1372 Broadway
 Casino Dresses, Inc., 530 Seventh Ave.
 Cohen Tunick, Inc., 525 Seventh Ave.
 Dalton Frocks, Inc., 1372 Broadway
 Sam Davidson, Inc., 1400 Broadway
 Dresden Dress Co., Inc., 1400 Broadway
 Fashion Wear Dress Co., Inc., 1400 Broadway
 347 Franklin Dress Co., Inc., 318 W. Adams, Chicago, Ill.
 Ginsburg & Abelson, Inc., 1400 Broadway
 Alexander S. Gross, Inc., 498 Seventh Ave.
 Lee Claire Costumes, Inc., 525 Seventh Ave.
 Lyla Modes, Inc., 1400 Broadway
 Lyttle Bros., Inc., 1400 Broadway
 E. N. Marcus, 1400 Broadway
 Matty Moskowitz, Inc., 530 Seventh Ave.
 Parnis-Levinson, Inc., 530 Seventh Ave.
 Patricia Perkins, Inc., Los Angeles, Calif.
 Radiant Dress Co., Inc., 525 Seventh Ave.
 Reich-Goldfarb & Co., Inc., 530 Seventh Ave.
 L. C. Rosenblatt, Inc., 1440 Broadway
 Schultze-Zuch, Inc., 525 Seventh Ave.
 348 Stern & Goldberg, Inc., 525 Seventh Ave.
 Will Steinman, Inc., 525 Seventh Ave.
 Valroy, Inc., 491 Seventh Ave.
 Phil Zahn & Co., Inc., 1400 Broadway

(All the above-named, except the two otherwise shown,
are located in New York, N. Y.)

Bretter & Sussman, Inc., 1375 Broadway
 Campus Modes, Inc., 1400 Broadway
 Flo-Frocks, Inc., 1385 Broadway
 George Hess Co., Inc., 1385 Broadway
 Junior Fashion Guild, Inc., 498 Seventh Ave.
 Michael Kaplan & M. Kaplan (copartners trading as Mike
 Kaplan Dresses), 1400 Broadway
 Wein Frocks, Inc., 1375 Broadway
 Abbate-Swift, Inc., 1385 Broadway
 Argosy Dresses, Inc., 1385 Broadway
 Cecele Dance Frocks, Inc., 1384 Broadway
 Garland Dress Co., Inc., 1400 Broadway
 B. Tobias, Inc., 498 Seventh Ave.
 Samuel Birman, Herman Lipman and Julius Lipman (co-
 partners), 1400 Broadway
 Marie Lynn Dance Frocks, Inc., 1384 Broadway
 Rosenthal & Kallman, Inc., 1400 Broadway

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(All of the above are located in New York, N. Y.)

PARAGRAPH TWO: Respondent Michigan Avenue Guild
 of Chicago is a membership corporation organized under
 the laws of the State of Illinois, on April 27, 1932. Its
 headquarters are located at 669 North Michigan Avenue,
 Chicago, Illinois. The membership of this corporation is
 composed of approximately seventy-five retail dealers in
 women's wearing apparel, whose places of business are
 located in Chicago, Illinois. Its officers in 1936 were

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Guy L. Ederheimer,	President
Frank L. Cole,	Vice-President
Edward A. Fletcher,	Secretary
L. R. Pearson,	Treasurer

George M. Gleason was president in 1935.

Leo Bramson
Guy L. Ederheimer
M. E. Greenebaum
Sally K. Greenebaum
E. R. Lindburg

The following named persons were members of its Board of Directors in 1935:

Herman Friedman
Elise A. Runyan

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PARAGRAPH THREE: Respondent Minneapolis Fashion Guild is an unincorporated membership association, having its headquarters in Minneapolis, Minnesota. Roy H. Bjorkman is the executive secretary of this association and dominates and controls its activities. The association has no other officers or directors. Approximately nineteen dealers in women's wearing apparel whose places of business are located in Minneapolis, Minnesota, comprise the membership of this association.

PARAGRAPH FOUR: Respondent Ladies' Ready-to-Wear Guild of Baltimore, Inc., is a membership corporation organized under the laws of the State of Maryland. The following-named persons comprise the officers and directors of this corporation:

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President & Director
Vice-President and Director
Secretary
Director
Director
Director
Director
Director
Director
Director
Director

The membership of this respondent corporation is composed of approximately forty retail dealers in women's garments whose places of business are located in Baltimore, Maryland.

PARAGRAPH FIVE: Respondent National Federation of Textiles, Inc., is a membership corporation organized under the laws of the State of Connecticut. Its principal office is located at 10 East 40th Street, in the City and State of New York. Peter Van Horn is the president of this corporation and Irene L. Blunt is its secretary.

The membership of this corporation consists of approximately one hundred manufacturers, converters, dyers and printers of silk and rayon fabrics.

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PARAGRAPH SIX: Approximately 12,000 retail dealers in women's garments, located at various places throughout the United States, cooperate with the respondent F.O.G.A. in carrying out its hereinafter described programs, policies and practices, and have signed declarations of cooperation which will be hereinafter described. It is impracticable to name all of said cooperating retailers as respondents, but the following named respondents are representative of the whole:

Marshall Field & Company—a corporation organized under the laws of the State of New York and having its principal place of business at 222 North Bank Drive, in the City of Chicago, State of Illinois. John McKinley is president of this corporation; Ernest L. Olrich is its secretary, and Horace A. Wetmore is its treasurer.

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Allied Stores Corporation—a corporation organized under the laws of Delaware, and having its principal place of business at 85 Ellison Street, Paterson, New Jersey. D. Earl Pluckett is its president and A. C. Hallam is its secretary and treasurer.

The Lindner Co'y (designated in the complaint as Linder Company)—a corporation organized under the laws of the State of Ohio and having its principal place of business at Euclid Avenue and East 14th Street, in the City of Cleveland and State of Ohio. Max Gordon is its president and Edward Schwarz is its secretary.

Joseph Horne Company (designated in the complaint as Horne Company)—a corporation organized under the laws of the State of Pennsylvania and having its principal place of business on Pennsylvania Avenue and Stanwix Street, in the City of Pittsburgh, Pennsylvania. A. M. Burchfield is its president and W. M. Friesell is its secretary and treasurer.

Mandel Bros., Inc.—a corporation organized under the laws of the State of Delaware and having its principal place of business at 1 North State Street, in the City of Chicago, State of Illinois. Edwin F. Mandel is its president and Sam J. Altheimer is its secretary.

John Wanamaker, Philadelphia—a corporation organized under the laws of the State of Pennsylvania, and having its principal place of business in the City of Philadelphia, State of Pennsylvania. William L. Nevin is its president and Henry H. Funk is its secretary.

Lit Brothers, Inc. (designated in the complaint as Lit Brothers)—a corporation organized under the laws of the State of Pennsylvania and having its principal place of business in the City of Philadelphia, State of Pennsylvania. G. H. Johnson is its president and A. T. Hild is its assistant secretary.

Bullock's, Inc.—a corporation organized under the laws of the State of Delaware, having its principal place of business located at Hill and Seventh Streets in the City of Los Angeles, State of California. F. G. Winnett is its president and M. E. Arnett is its secretary.

The Emporium Capwell Corporation (named in the complaint as Emporium Capwell Corporation)—a corporation organized under the laws of the State of Delaware, and having its principal place of business at 835 Market Street in the City of San Francisco, State of California. Joel W. Kaufman is its vice-president, secretary and treasurer. This corporation owns all the common stock of The Emporium, a California corporation which owns and operates the Capwell Department Store, located in Oakland, California, and The Emporium Department Store, located in San Francisco, California.

J. L. Hudson Co.—a corporation organized under the laws of the State of Michigan and having its principal place of business located in the City of Detroit, State of Michigan. Oscar Weber is its vice-president and general manager.

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In a number of instances these cooperating retail dealers, at the request of the F.O.G.A., have contributed to its fund to be used in defraying the expenses incident to the effectuation of its programs and policies, and such contributing retail dealers are designated by the F.O.G.A. as retail contributing members.

PARAGRAPH SEVEN: The members of the F.O.G.A. and the National Federation of Textiles, Inc., sell and ship their products to dealers located in states other than those in which said members are located, and in so doing, are in competition among themselves and with other manufacturers who likewise sell and ship similar products.

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PARAGRAPH EIGHT: The garment-manufacturing members of the F.O.G.A. are a dominant factor in the women's garment manufacturing industry, and their products are in such demand by the trade and the purchasing public that all retail dealers in women's garments, in order to

meet competition and the demand of the consuming public, are compelled to stock and handle some of the lines manufactured by said F.O.G.A. members. The combined sales of the members of the F.O.G.A. in 1936 constituted 38.8 per cent of the total sales of women's garments in the United States in the wholesale price range of \$6.75 and up, and 83.99 per cent in the wholesale price range of \$10.75 and up.

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PARAGRAPH NINE: Respondent F.O.G.A. was organized in March, 1932, by approximately fifteen manufacturers of women's garments which sold at wholesale for from \$29.50 up. Manufacturers of lower priced garments were admitted from time to time, and by the fall of 1935 the membership included manufacturers in the price range of from \$6.75 up. After the F.O.G.A. was organized, it was decided to include in its membership manufacturers of textiles used in the women's garment manufacturing industry. By April 16, 1936, the membership of this respondent consisted of 176 manufacturers of women's garments, and 49 manufacturers, converters, dyers and printers of textiles.

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Respondent F.O.G.A., was organized primarily for the purpose of preventing the copying for sale in commerce of alleged original creations in fashions and styles of women's garments. The program was later expanded to cover designs of textiles used in the manufacture of women's garments. This respondent from time to time enlarged its original program to cover other practices and policies which will be hereinafter set forth.

PARAGRAPH TEN: Respondent F.O.G.A., in furtherance of its objectives, sought and secured the cooperation of the three respondent local guilds, Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild, and Ladies' Ready-to-Wear Guild of Baltimore, Inc. Each of these guilds entered into an agreement with the F.O.G.A., by the terms

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of which the F.O.G.A. agrees that its members will not sell their products in the cities in which said local guilds are located to retailers who are not members in good standing of said local guilds, or who do not conform to their standards and regulations; that they will not sell at retail to individual consumers or to persons conducting their business in residences, residential quarters, or in hotels or apartment buildings; that they will not conduct off-price promotion sales or clearance sales prior to the dates fixed by the local guild; that they will not sell to any member of the local guild who shall violate any of the provisions of the agreement until such member is restored to good standing in the local guild; that if any of its members shall breach any of the provisions of this agreement they will be suspended from membership.

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The respective local guilds agree that their members will not purchase from manufacturers who do not conform to the standard of ethics and the regulation of the F.O.G.A.; that they will not knowingly buy or sell copies of legitimately registered styles and will return any such copies as are found in their stock; that they will accept the decision of the "style piracy" division of the F.O.G.A. on all questions of alleged design piracy; that they will stamp all their orders for merchandise with the warranty clause formulated by the F.O.G.A., which clause is as follows:

"This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

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Each of the respondent local guilds agrees that it will suspend from membership any member who shall violate any of the provisions of the agreement; that its members will refrain from purchasing from any member of the

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F.O.G.A. who shall violate any of the provisions of this agreement until such time as such member shall be restored to membership in good standing of the F.O.G.A.

The terms of these agreements were fulfilled by the F.O.G.A. and its members, and by the respective local guilds and their members.

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PARAGRAPH ELEVEN: Respondent F.O.G.A., in 1933, determined that its objectives would be best accomplished by securing the cooperation of individual retail dealers in women's garments in territories which had no local guilds, and to this end, it distributed to retail dealers throughout the United States copies of what it termed a "Declaration of Cooperation," for the signature of the retailer. It is stated in this Declaration of Cooperation that the retailer will not buy any copies of merchandise created by members of the F.O.G.A.; that he will abide by the decision of the "piracy committee" of the F.O.G.A., and return such garments as are adjudged to be copies of the Guild's registered styles, and will cooperate with the F.O.G.A. to the fullest extent in helping it to remove such copies from the market; that he will furnish the F.O.G.A. with such information in his possession as it may desire; that he will affix to all of his apparel orders the warranty clause formulated by the F.O.G.A., which is set forth in Paragraph Ten hereof.

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At first the F.O.G.A. attempted to secure the voluntary cooperation of the retailers and their signatures to the declaration of cooperation by representing the advantages to be derived from such cooperation; later, after having secured a number of voluntary signatures to this "declaration," the F.O.G.A. coerced, constrained and compelled retail dealers to sign such declarations of cooperation under the threat that unless they did so, its members would refuse to sell them their products or to allow them to inspect their lines of merchandise. The garment-manufacturing members of the F.O.G.A. have refused and do refuse to

exhibit or sell their merchandise to retailers who fail or refuse to sign said declarations of cooperation, or who, having signed same, fail to comply with the requirements thereof.

As a result of the coercive activities of the F.O.G.A., approximately 12,000 retail dealers, including those specifically mentioned in Paragraph Six hereof, had signed such declarations of cooperation and returned same to the F.O.G.A. by the end of 1935. The retailers who signed these declarations thereafter refused to purchase garments which were determined by the F.O.G.A. to be copies of original registered styles or designs of its members, and the terms of the declaration were generally complied with by the signers thereof. In some instances, however, signers of these declarations of cooperation failed or refused to comply with the terms of such declaration of cooperation, in which instances the members of the F.O.G.A., in accordance with the requirement of the F.O.G.A., refused to sell or exhibit their merchandise to such non-complying retailers. The majority of the 12,000 retail dealers in women's garments referred to in Paragraph Six hereof signed such declarations of cooperation as a result of the threat of the F.O.G.A. that its members would sell their products only to those merchants who signed the declaration of cooperation.

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The respondent, F.O.G.A., after it had secured the cooperation of a large number of retail dealers, sought to, and did, induce many retailers not only to refuse to purchase alleged copies of original designs of its members, but also to refuse to purchase any of their requirements from manufacturers who copied original styles or designs of members of the F.O.G.A.

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PARAGRAPH TWELVE: The F.O.G.A., as a part of its program, in 1933 instituted its Design Registration Bureau for the registration of alleged original designs and styles

of its women's garment-manufacturing members. Blank application forms were furnished the members, on which description was entered of the design and style of the garment to be registered, and members were required to submit a sketch of the garment with such form, together with an affidavit setting forth that the garment sought to be registered was an original design created by the applicant. Each registration was stamped and numbered, but such registration raised no presumption that the registered garment was, in fact, the original design of the registrant, but merely fixed the date when such claim was made.

PARAGRAPH THIRTEEN: The F.O.G.A. from time to time appoints what it designates as a "piracy committee," to determine whether the garments alleged to be copies of styles and designs registered by its members as original creations are such in fact. The piracy committee notifies both parties to the controversy as to the time and place of hearing, and both the garment claimed as original and its alleged copy are before the committee. After the hearing, the committee makes its determination, and if adverse to the alleged copyist, he has the right of appeal to certain other successive committees, as provided. When the challenged party has exhausted the appeals in such case provided, the status of the garment is fixed.

PARAGRAPH FOURTEEN: The F.O.G.A. employs in the principal cities throughout the country persons designated as "shoppers," who visit the stores of cooperating retail dealers for the purpose of examining their stocks, to determine and report as to whether they contain garments declared by the piracy committee of the F.O.G.A. to be copies of registered designs or styles of its members. When such copies are discovered by the shoppers, they request the retailer to remove the same from sale, and failure to do so is reported by the shopper to the F.O.G.A. These

shoppers also visit the stores of non-cooperating retail dealers, without disclosing their identity, for the purpose of ascertaining whether such merchants have on sale copies of alleged original designs and styles of F.O.G.A. members, and if such are found, it is reported to the F.O.G.A.

PARAGRAPH FIFTEEN: The F.O.G.A., in order to provide an effective means of preventing the purchase by retail dealers of alleged copies of original styles and designs registered by its members, inaugurated and maintains a card-index system by which the names of cooperating retailers who have signed the declaration of cooperation are each entered on a white card, duplicates of which are sent to each member of the F.O.G.A., and such members are prohibited from selling to any retail merchant whose name is not so carded. The names of retailers who fail or refuse to sign the declaration of cooperation, or who, having signed, fail or refuse to take off sales garments adjudged by the piracy committee of the F.O.G.A. to be copies of registered original designs of an F.O.G.A. member, are entered on a red card, a duplicate of which is sent to each member of the F.O.G.A., and upon receipt of same, the member, in compliance with the regulations and requirements of the F.O.G.A., refuses to sell such red-carded retailer. The F.O.G.A. also distributes among its members lists of retailers who have failed or refused to sign the declaration of cooperation, or who, having signed same, fail or refuse to remove from sale copies of alleged original styles or designs registered by its members, or who fail to comply with the rules and regulations of the F.O.G.A., with instructions that members receiving such lists are not to sell their merchandise to persons whose names appear thereon, and its members thereafter refuse to sell such persons. The red-carded list, on March 20, 1936, contained the names of over 400 retail dealers located at various places throughout the United States. The F.O.G.A. has

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also red-carded retailers who refuse to disclose the name of the manufacturer from whom they purchased alleged copies, even though such retailers removed the alleged copies from sale.

383 PARAGRAPH SIXTEEN: The respondent National Federation of Textiles, Inc., maintains a clearing-house for the registration of textile designs, under the name Industrial Design Registration Bureau. This bureau is available to members and non-members of said respondent corporation. The F.O.G.A. designated this bureau as the official registration bureau of its textile members, and the garment-manufacturing members and the textile members of the F.O.G.A. entered into an agreement that the former would not buy textiles which were not registered in said bureau, and the latter agreed to sell only to those garment manufacturers who became parties to said agreement. The agreements were and are kept by said members.

384 PARAGRAPH SEVENTEEN: Respondent National Federation of Textiles, Inc., on December 23, 1935, placed an advertisement in a trade journal, notifying manufacturers and converters of textiles used in the women's garment manufacturing industry that members of the F.O.G.A. and other manufacturers of women's garments who were not members of the F.O.G.A., had signed pledges to use only textile designs which had been registered in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

PARAGRAPH EIGHTEEN: On December 28, 1933, the F.O.G.A. passed a resolution that, as a means of preventing style piracy, its members would not buy from textile manufacturers who sold to retailers who entered into agreements with manufacturers to manufacture styles, and that they would not sell to retailers who resort to this practice.

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PARAGRAPH NINETEEN: On September 13, 1933, the board of governors of the F.O.G.A., by resolution, prohibited its members from participating in any manner whatsoever in any retail advertising, and fixed expulsion from the organization as the penalty for violation thereof; and the members of the F.O.G.A. have complied and do comply with the terms of this resolution.

PARAGRAPH TWENTY: On June 10, 1935, the F.O.G.A. adopted a resolution that none of its members should allow or give any discount in excess of "8-10 e.o.m."

PARAGRAPH TWENTY-ONE: The F.O.G.A., on June 10, 1935, adopted a resolution prohibiting its members from selling at retail, and thereafter its members refused to make retail sales.

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PARAGRAPH TWENTY-TWO: The F.O.G.A. cooperated with the Ladies' Ready-to-Wear Guild of Baltimore, Inc., in its attempt to prevent special sales except upon days designated by said Baltimore Guild.

PARAGRAPH TWENTY-THREE: In compliance with the policy and program of the F.O.G.A., its members refuse to sell their women's garments to persons who conduct business in residences, residential quarters, hotels or apartment houses.

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PARAGRAPH TWENTY-FOUR: In the event a retailer fails to obey the rule of the F.O.G.A. which prohibits retailers participating with dress manufacturers in promoting fashion shows unless the merchandise used therein be actually purchased and delivered, the F.O.G.A. refuses to continue its affiliation with such retailer and denies to him all the privileges resulting from such affiliation.

PARAGRAPH TWENTY-FIVE: In compliance with the policy and program of the F.O.G.A., its members refrain from participating in fashion shows sponsored by retailers.

PARAGRAPH TWENTY-SIX: The F.O.G.A. employs auditors who audit the books of its members to ascertain whether they are selling red-carded retailers or violating any of the regulations, policies or programs of the F.O.G.A.

PARAGRAPH TWENTY-SEVEN: The F.O.G.A. collects fines which it imposes on its members who are shown by its auditor's reports, or otherwise, to have sold red-carded retailers, or to have violated any of its policies or programs. A fine of \$1,500 was collected from one member, and the F.O.G.A. notified its membership that a fine of \$5,000 would be assessed by it in case of future violation.

PARAGRAPH TWENTY-EIGHT: Retail dealers in women's garments who have failed or refused to cooperate with the F.O.G.A., or who, having signed its declaration of cooperation, have failed or refused to remove from sale garments declared by the F.O.G.A. to be copies of registered original designs or styles of its members, have been occasioned loss of good will and great financial loss by the refusal of garment-manufacturing members of the F.O.G.A. to sell them their merchandise.

PARAGRAPH TWENTY-NINE: Manufacturers of women's garments who sell their products in interstate commerce and who are not members of the F.O.G.A. have been occasioned great financial loss, due to the return by retail dealers, in compliance with the requirements of respondent F.O.G.A., of garments declared by said respondent to be copies of registered original styles or designs of its members.

PARAGRAPH THIRTY: Respondent F.O.G.A. has induced and constrained retail dealers to refrain from purchasing any of their requirements from manufacturers declared by it to be confirmed copyists, and as a result, such manufacturers have suffered great financial loss.

PARAGRAPH THIRTY-ONE: All of the respondents, during the period of time, to wit, from March 7, 1932, to April 16, 1936, by cooperating with each other in the conduct and consummation of the policies and programs of the respondent F.O.G.A., and pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally by them, and by reason of the policies and programs in pursuance thereof, have produced and caused the following conditions and effects:

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(a) Prevented competitors of members of the F.O.G.A. and the National Federation of Textiles, Inc., from making sales of their products and shipments thereof in interstate commerce, and, as a result, competition in interstate commerce in the sale and shipment of women's garments and textiles used in the manufacture thereof has been substantially lessened, hindered and suppressed.

(b) Prevented retail dealers in women's garments, located throughout the United States, from buying their requirements from manufacturers boycotted by the respondent F.O.G.A., and as a result, competition in interstate commerce in the purchase and sale of women's garments has been substantially lessened, hindered and suppressed.

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(c) Respondents F.O.G.A. and the National Federation of Textiles, Inc., have obtained and have exercised control over the business practices of a majority of the manufacturers and distributors of women's garments and the textiles used in the manufacture thereof, and have the power

to exclude from the industry those manufacturers and distributors who do not conform to the rules and regulations of said respondents, and thus tend to create in themselves a monopoly in the said industries.

(d) Constrained, coerced and compelled retail dealers in women's garments throughout the United States to declare their intention to cooperate with the F.O.G.A. in its policies and programs by signing the declaration of cooperation submitted by the F.O.G.A.

(e) Caused retail dailers in women's garments who failed or refused to sign the declaration of cooperation of the F.O.G.A., or who, having signed same, failed to remove from sale garments found by the F.O.G.A. to be copies of styles or designs registered as original creations of its members, to suffer great financial loss and loss of good will because of the refusal of members of the F.O.G.A. to sell their merchandise to such retailers.

(f) The F.O.G.A. fixes the amount of discounts to be given by its garment-manufacturing members to retail dealers.

(g) Garment-manufacturing members of the F.O.G.A. refuse to sell their merchandise at retail, or to persons conducting business in residences, residential quarters, hotels or apartment houses.

(h) The F.O.G.A. prohibits its garment-manufacturing members from participating in fashion shows conducted by retailers.

(i) The F.O.G.A. prevents its garment-manufacturing members from subsidizing retail advertising.

(j) The F.O.G.A. exacts fines from its garment-manufacturing members for violation of its policies and programs.

Findings of Fact and Conclusions of Law:

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(k) Garment-manufacturing members of the F.O.G.A. refuse to buy from textile manufacturers that sell to retailers who enter into agreements with manufacturers to manufacture styles.

(l) Garment-manufacturing members of the F.O.G.A. refuse to sell to retail dealers who enter into contracts with manufacturers to manufacture styles.

(m) Textile members of the F.O.G.A. refuse to sell their products to manufacturers who enter into agreements with retail dealers to manufacture styles.

(n) Garment-manufacturing members of the F.O.G.A. refuse to purchase textiles from manufacturers thereof who do not register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

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(o) Textile members of the F.O.G.A. refuse to sell their products to manufacturers who do not agree to purchase only from textile manufacturers who register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

(p) Garment-manufacturing members of the F.O.G.A. refuse to sell to retail dealers in Chicago, Illinois, Minneapolis, Minnesota, and Baltimore, Maryland, who are not members of the local guild of said respective cities, or who do not conform to the rules and regulations of said respective guilds; and members of said respondent local guilds confine their purchases of women's garments to members of the F.O.G.A. and those manufacturers who conform to the regulations, programs and policies of the F.O.G.A.

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Findings of Fact and Conclusions of Law.

CONCLUSION

The acts, policies and practices of the respondents, as set forth in the foregoing findings as to the facts, under the circumstances therein set forth, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, and tend to create a monopoly, within the intent and meaning of the Federal Trade Commission Act.

Dated this 8th day of February, A. D. 1939.

BY THE COMMISSION.

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(Seal)

R. E. FREER,
Chairman.

Attest:

OTIS B. JOHNSON,
Secretary.

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Order to Cease and Desist.

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UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 8th day of February, A. D. 1939.

COMMISSIONERS: ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES.

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IN THE MATTER**OF**

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members.

Docket
No. 2769

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and other evidence taken before John W. Bennett, Edward M. Averill and Charles F. Diggs, respectively, examiners of the Commission theretofore duly designated by it, and briefs filed herein and oral arguments by counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

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IT IS ORDERED, that the respondents, Fashion Originators Guild of America, Inc., its officers,

Maurice Rentner,	President, Treasurer and Member of its Board of Governors,
Herbert Sondheim,	First Vice-President and Member of its Board of Governors,
Charles Gumprecht,	Second Vice-President and Member of its Board of Governors,
J. A. Livingston,	Treasurer and Member of its Board of Governors,
Albert M. Post,	Executive Director,
James M. Golby,	Executive Secretary,

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and their successors;

William Bass,	David Bender,
Louis J. Brenner,	Theodore Racoosin,
Jo Copeland,	Charles Lang,
William Fox,	Samuel Kass,
Joseph Halpert,	D. Eli Lahm,
Charles Miller,	Louis M. Wersba,
Kallman Carmel,	Leo Del Monte,
David M. Goodstein,	Matthew Kane,

Louis J. Mallas,

and their successors, members of its Board of Governors;

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Austin M. DeLisser, executive secretary of the Textile Merchants Group of the Fashion Originators Guild of America, Inc., and E. W. Freudenberg, Samuel Levine and E. E. Meyer, and their successors, Members of its Steering Committee, and the following named members of the Fashion Originators Guild of America, Inc.:

Order to Cease and Desist.

Aldrich & Malvin, Inc.	Milton Altmark, Inc.
Charles Armour & Bros., Inc.	Arons, Bernstein & Arons, Inc.
Joseph & Ben Barnett, Inc.	Rose, Barraek & Lahim, Inc.
William Bass Dress Corp.	Herman Beispel, Inc.
ender & Hamburger, Inc.	Blotta & Conti, Inc.
Brenner, Joseph & White, Inc.	Brenner, Morris, Inc.
Lattie Carnegie, Inc.	Clifford Salkin, Inc.
Lewis Cohn, Inc.	Jo Copeland, Inc.
David Crystal, Inc.	Dolces Dressing, Inc.
Anna Duke, Inc.	Eta, Inc.
Eigenbaum & Adelsohn, Inc.	Pauline Fields, Inc.
Herman Floersheimer & Bro., Inc.	Henry Ganz, Inc.
Louise Barnes Gallagher, Inc.	Gardner & Schwartz, Inc.
Marfinckel & Siegel, Inc.	Ed Garrick & Co., Inc.
Goodman & Co., Inc.	Joseph Greenberg-Bettina, Inc.
Julius Grossman & Fred Greenberg	Joseph Halpert, Inc.
Dress Co., Inc.	Jack Herzog & Bro., Inc.
Charles Groden, Inc.	E. A. Jackson-Bienard, Inc.
Max Heit Dress Corp.	Kaplan & Moskowitz, Inc.
Strom Herbert & Charles Cooper,	Kiviette, Inc.
Inc.	Kornhausen Gowns, Inc.
Virginia Hume & Gold, Inc.	LaRue Dresses, Inc.
Callman & Morris, Inc.	Mary Lee Frocks, Inc.
Samuel Kass Gowns, Inc.	Mary Liotta, Inc.
Charles Kondazian & Papaz, Inc.	H. Milgrim & Bros., Inc.
Charles Lang, Inc.	Jennie Moskowitz, Inc.
Linkowsky Modes, Inc.	Nomis Dress Co., Inc.
Lin Reig, Inc.	Pattulo Modes, Inc.
Lottie Rosenstein Gowns, Inc.	Amrein Freudenberg & Co., Inc.
Adolf Gowns, Inc.	Bloomsburg Silk Mill, Inc.
M. Silverman Dresses, Inc.	Brueck & Richards, Inc.
Herbert Sondheim, Inc.	Chatillon, Mouly, Roussel, Inc.
Frank Starr Friedlander, Inc.	Combier & Co., Inc.
Attre-Fox, Inc.	Coudurier, Frustus & Devigne,
John Traina, Inc.	Inc.
Ed A. Block, Inc.	Silk Guild of America, Inc.
N. Fried	Empire Silk Co. (Inc.)
Lang-Kohn Mfg. Co.	The Forstman Woolen Co. (Inc.)

Tightly Bound

Order to Cease and Desist.

Robinson Bros., Inc.	Theodore J. Gallagher, Inc.
Dartmoor Coat Co., Inc.	L. J. Hyams
Ben Gershel & Co., Inc.	Kandelaft Silks, Inc.
Ben Ginsberg, Inc.	Maginnis & Thomas, Inc.
Aaron Goldstein Co., Inc.	Menke Kaufman & Co.
Grossman & Spiegel, Inc.	Wm. C. Openhym
Monte, Sans & Pruzan, Inc.	L. & E. Stirn, Inc.
Louis Kallish	Bianchini, Ferrier, Inc.
Ashley Frocks, Inc.	Sidney Blumenthal & Co., Inc.
Joseph M. Duberman	Case & Co., Inc.
Joanne, Jr., Zinn Bros., Inc.	Cheney Bros., Inc.
Louise Mulligan, Inc.	Descours, Genthon, Inc.
M. A. Litvin, Inc.	Croydon Fabrics, Inc.
Germaine Monteil, Inc.	F. DuCharne Silk Co., Inc.
Nanty Frocks, Inc.	Cohn-Hall-Max Co., Inc.
Paul Parnes, Inc.	Frank Associates, Inc.
Perles & Gilbert, Inc.	Hess, Goldsmith & Co., Inc.
Maurice Rentner, Inc.	Jane Hyams
James J. Rothenberg, Inc.	Lace Net Importing Co., Inc.
Ruffolo Bros., Inc.	H. B. Mallinson & Co., Inc.
Somay, Inc.	Onondaga Silk Co.
Spectator Sports, Inc.	Remond-Holland, Inc.
Straus-Miller, Inc.	Stunzi Sons Silk Co., Inc.
A. Traina Gowns, Inc.	Susquehanna Silk Mills (Inc.)
B. G. Garment Co., Inc.	J. A. Wagenbauer, Inc.
S. Eisenberg	Wechsler Silk Corp.
Junior Guild Frocks, Inc.	J. J. & N. Blackstone, Inc.
Matthew Kadetsky Co.	Ellen Lace & Embroidery Co.
Carmel Bros., Inc.	Inc.
Deitsch, Wersba & Coppola, Inc.	Ikle Freres & Co., Inc.
Del Monte Hickey Co., Inc.	Lido Embroidery, Inc.
Louis Goldstein Company, Inc.	Record Lace & Embroidery
Philip Mangone & Co., Inc.	Inc.
Zuckerman & Kraus, Inc.	Walter Tobler
Max Rosenbluth	Franz Hoenig
J. H. Horwitz	Schwarzenbach, Huber, Inc.
Jane Junior Dresses, Inc.	Wahnetah Silk Co., Inc.
Junior League Frocks, Inc.	Zellinger & Schreth, Inc.

Order to Cease and Desist.

Rentner-Miller, Inc.
 H. Hollander
 Herbert Lehman, Inc.
 Saison France, Inc.
 Swiss Novelty Embroidery Co., Inc.
 Wolfman, Inc.
 Adler & Adler, Inc.
 David M. Goodstein, Inc.
 Joseph Levay, Inc.
 David N. Lowenthal & Son, Inc.
 Charles W. Nudelman, Inc.
 Theodore Rosenberg
 Maid Dresses, Inc.
 Downley Frocks, Inc.
 Brown Dress Co., Inc.
 Daytime Frocks, Inc.
 Harry Frank
 Goldman Frocks Co., Inc.
 Mark Dresses, Inc.
 Christian Mfg. Co., Inc.
 Rosen Bros. Frocks, Inc.
 Over Dresses, Inc.
 Gitlin & Schneider, Inc.
 Anderson-Bob Burns, Inc.
 Grace Ashley,
 Pri Frocks, Inc.
 Ben-Tunick, Inc.
 Dan Davidson, Inc.
 Fashion Wear Dress Co., Inc.
 Rosenberg & Abelson, Inc.
 Claire Costumes, Inc.
 Little Bros., Inc.
 Betty Moskowitz, Inc.
 Patricia Perkins, Inc.
 Rich-Goldfarb & Co., Inc.
 Hultze-Zuch, Inc.
 Ill Steinman, Inc.

Dutschler, Trull & Justin, Inc.
 C. H. D. Robbins Co., Inc.
 Sheila-Lynn Dresses, Inc.
 David S. Westheim Corp.
 Bernard Appel, Inc.
 Bonn Ray Dance Frocks, Inc.
 Casino Dresses, Inc.
 Dalton Frocks, Inc.
 Dresden Dress Co., Inc.
 Franklin Dress Co., Inc.
 Alexander S. Gross, Inc.
 Lyla Modes, Inc.
 E. N. Marcus
 Parnis-Levinson, Inc.
 Radiant Dress Co., Inc.
 L. C. Rosenblatt, Inc.
 Stern & Goldberg, Inc.
 Vahoy, Inc.
 Bretter & Sussman, Inc.
 Flo-Frocks, Inc.
 George Hess Co., Inc.
 Michael Kaplan
 Wein Frocks, Inc.
 Argosy Dresses, Inc.
 Garland Dress Co., Inc.
 Samuel Lipman
 Julius Lipman
 Rosenthal & Kallman, Inc.
 Junior Fashion Guild, Inc.
 M. Kaplan
 Abbate-Swift, Inc.
 Cecele Dance Frocks, Inc.
 B. Tobias, Inc.
 Herman Lipman
 Marie-Lynn Dance Frocks, Inc.

Order to Cease and Desist.

Phil Zahn & Co., Inc.
 Campus Modes, Inc.
 Davidow, Inc.
 Kane-Weill, Inc.
 J. A. Livingston, Inc.
 Mutual Rosenbloom Corp.
 Zoltan Rosenberg
 Sport Kraft, Inc.
 Sam Steinberg & Co., Inc.

L. & D. Beilinson, Inc.
 F.E.D. Dress Co., Inc.
 Friedman Dress Co., Inc.
 International Dress Co., Inc.
 Joe Levine Dress Co., Inc.

and all present and future members, their agents, servants and employees, each and all,

CEASE AND DESIST from directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to hinder or suppress competition in the interstate sale and distribution of women's garments or textiles used in the manufacture thereof; or to hinder or suppress competition among manufacturers of said garments or textiles in the interstate sale and distribution of said products to retail dealers, and particularly from directly or indirectly, in pursuance of any such understanding, arrangement, agreement, combination or conspiracy, from:

1. Inducing, coercing, constraining or compelling manufacturers of women's garments to confine their purchases of textiles to those textile manufacturers who register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

2. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to buy from textile manufacturers who sell to retail dealers in women's garments who enter into agreements with manufacturers to manufacture styles, or to refuse to sell to such retail dealers as resort to such practices.
3. Inducing, coercing, constraining or compelling textile members of the Fashion Originators Guild of America, Inc., to refuse to sell textiles to women's garment manufacturers who do not agree to purchase only from textile manufacturers who register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc. 422
4. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell their merchandise to retail dealers who do not agree to cooperate with, or who do not cooperate with, the Fashion Originators Guild of America, Inc., by refusing to buy women's garments declared by it to be copies of original registered designs of its members and registered by them in the registration bureau of said respondent, Fashion Originators Guild of America, Inc., and by returning to the manufacturers thereof any such copies which may be found in their stock, and by stamping all their orders for merchandise with the warranty clause stamp of the Fashion Originators Guild of America, Inc., which recites that the seller warrants that the garments ordered and sold are not copies of styles originated by members of the Fashion Originators Guild of 423

America, Inc., and that the purchaser reserves the right to return any merchandise which is not as warranted.

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5. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to confine their sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, to retail dealers in women's garments who are members of the respective respondent local guilds of those cities, to wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc., or those who conform to the standards and regulations of such respondent local guilds.

6. Inducing, coercing, constraining or compelling the women's garment-manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to conduct off-price promotion sales, or clearance sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, prior to the dates fixed for such sales by the respective respondent local guilds, to wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc.

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7. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell at retail, or to persons conducting their business in residences, residential quarters, hotels or apartment buildings.
8. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to

Order to Cease and Desist.

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refuse to exhibit or sell their merchandise to retail dealers who fail or refuse to sign the Declaration of Cooperation of the Fashion Originators Guild of America, Inc., or who, having signed same, fail or refuse to comply with the conditions thereof.

9. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to contribute to the cost of advertisements of retail dealers in women's garments.

10. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to participate in fashion shows sponsored by retailers.

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11. Fixing or attempting to fix, or dictate, the amount of discounts to be allowed by the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to retail dealers in women's garments.

12. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to permit retailers to participate with them in promoting fashion shows unless the merchandise used therein has been actually purchased and delivered to such retailers.

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13. Employing auditors, accountants or others to audit the books of the members of the Fashion Originators Guild of America, Inc., for the purpose of ascertaining whether they are violating or have violated any of the policies, regulations or programs of the Fashion Originators Guild of

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Order to Cease and Desist.

America, Inc., and from imposing or collecting fines or penalties, or suspending or expelling from membership in the Fashion Originators Guild of America, Inc., those members who violate the policies, regulations or programs of the Fashion Originators Guild of America, Inc.

IT IS FURTHER ORDERED, that the respondent Michigan Avenue Guild of Chicago,—

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Guy L. Ederheimer,
Edward A. Fletcher,
Harry Blum,
Louis Gossert,
A. E. Levitt,
Bernard Rose,
Herman Friedman,
Frank L. Cole,

L. R. Pearson,
Leo Bramson,
M. E. Greenbaum,
Sally K. Greenbaum,
E. R. Lindburg,
George M. Gleason,
Clarence A. Powell, and
Elise A. Bunyan,—

its officers and members of its Board of Directors and their successors, its members and all future members;

The respondent Minneapolis Fashion Guild, Roy H. Bjorkman, its Executive Secretary, and his successors, its officers and members of its Board of Directors and their successors, its members and all future members;

The respondent Ladies' Ready-to-Wear Guild of Baltimore, Inc.,—

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Charles G. Hutzler,
C. F. Roycroft,
William Pollock,
Martin B. Kohn,
J. E. Ellington,

Allen S. Metzger,
Fred H. Alperstein,
Lester Bonwit,
Albert D. Slesinger,
Sam J. Schleisner, and

Hal W. Kenaston,—

its officers and members of its Board of Directors, and their successors, its members and all future members:

Order to Cease and Desist.

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CEASE AND DESIST from directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, or persons, association or corporation:

(a) To refuse to purchase any of their requirements from manufacturers of women's garments who are not members, or who do not conform to the standards, ethics or regulations of the Fashion Originators Guild of America, Inc.;

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., prohibiting the purchase or sale of women's garments declared by it to be copies of styles or designs registered as original by its members in its design registration bureau;

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(c) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any such declared copies as are mentioned in subparagraph (b), that are found in their stock shall be removed from sale and returned to the manufacturer thereof;

(d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that all orders for women's garments shall be stamped with its warranty clause which recites that the seller warrants that the garments are not copies of styles or designs registered with the Fashion Originators Guild of America, Inc., as original by its members, and reserving the right in the purchaser to return any merchandise which is not as warranted;

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(e) To comply with the requirement of the Fashion Originators Guild of America, Inc., that purchases of women's garments be made only from its mem-

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Order to Cease and Desist.

bers in good standing or from manufacturers who observe its standards, ethics, policies and regulations.

IT IS FURTHER ORDERED, that the respondent National Federation of Textiles, Inc., Peter Van Horn, its President, Irene L. Blunt, its Secretary, and their successors, all other of its officers and their successors, members of its Board of Directors and their successors, and its members and all future members, their agents, servants and employees:

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CEASE AND DESIST from directly or indirectly, jointly or severally, entering into, or carrying out, any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, persons, association or corporation,—

(a) To refuse to sell their textile products to manufacturers of women's garments who fail or refuse to agree that they will not purchase any of their requirements from textile manufacturers who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.;

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(b) To publish in trade journals, newspapers, or in any other manner, that manufacturers of women's garments have entered into an agreement not to purchase textiles from manufacturers thereof who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

IT IS FURTHER ORDERED, that respondents Marshall Field & Company, Allied Stores Corporation, the Lindner Co'y, Joseph Horne Company, Mandel Brothers, Inc., John

Wanamaker, Philadelphia, Lit Brothers, Inc., Bullock's Inc., The Emporium Capwell Corporation and J. L. Hudson Co., their officers, members of their Boards of Directors, and their successors, their agents, servants and employees, and approximately 12,000 retail dealers in women's garments throughout the United States who have signed Declarations of Cooperation with respondent Fashion Originators Guild of America, Inc., whom it is impracticable to name herein, and of whom the respondents specifically named in this paragraph are representative:

CEASE AND DESIST from, directly or indirectly, jointly or severally entering into, or carrying out any understanding, arrangement, agreement, combination or conspiracy with each other, or with any other person or persons, association or corporation:

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- (a) To refuse to purchase any women's garments from manufacturers thereof who are not members of the Fashion Originators Guild of America, Inc., or who do not conform to its standards, ethics and regulations;
- (b) To comply with the requirement of the Fashion Originators Guild of America, Inc., not to purchase or sell women's garments declared by it to be copies of styles or designs registered in its design registration bureau by its members;
- (c) To comply with the request of the Fashion Originators Guild of America, Inc., that no women's garments be purchased from manufacturers declared by it to be confirmed copyists;
- (d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any women's garments found in their stocks which

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Order to Cease and Desist.

have been declared by it to be copies of registered styles and designs of its members be removed from sale and returned to the manufacturer thereof.

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IT IS FURTHER ORDERED that the complaint herein be, and the same hereby is, dismissed, insofar as it applies to respondent G. H. Conze, for the reason that said respondent resigned as a member of the Steering Committee of the textile group of Fashion Originators Guild of America, Inc., prior to the issuance of the complaint herein, and refused to be a party to the policies and programs which formed the basis of the charges set out in the complaint.

IT IS FURTHER ORDERED, that the respondents shall, within sixty (60) days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

BY THE COMMISSION.

(Seal)

OTIS B. JOHNSON,
Secretary.

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Order Deleting Portion of Order to Cease and Desist. 445

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of March, A. D. 1939.

COMMISSIONERS: ROBERT E. FREER, Chairman,
GARLAND S. FERGUSON,
CHARLES H. MARCH,
EWIN L. DAVIS,
WILLIAM A. AYRES.

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IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members.

Docket
No. 2769

This matter coming on for hearing by the Federal Trade Commission upon its own motion and it appearing that one prohibition of the order to cease and desist issued herein on February 8, 1939, should be deleted for the reason that there is a lack of substantial evidence establishing the participation of the respondent National Federation of Textiles, Inc., its officers, directors and members, in certain of the practices charged in the complaint, and the Commission having duly considered the matter and being now fully advised in the premises;

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448 Order Deleting Portion of Order to Cease and Desist.

IT IS ORDERED that subsection (a) of that portion of the order to cease and desist issued on February 8, 1939, directed to respondent National Federation of Textiles, Inc., its officers and directors, and their successors, and its members, be, and the same is hereby, deleted, said subsection (a) appearing on page 8 of the order to cease and desist as mimeographed and reading as follows:

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"To refuse to sell their textile products to manufacturers of women's garments who fail or refuse to agree that they will not purchase any of their requirements from textile manufacturers who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc."

IT IS FURTHER ORDERED that the order to cease and desist issued on February 8, 1939, except for the deletion herein directed, remain in full force and effect.

BY THE COMMISSION.

(Seal)

OTIS B. JOHNSON,
Secretary.

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Testimony.

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BEFORE THE

FEDERAL TRADE COMMISSION.

IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.

Docket
No. 2769.

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Room 901, 45 Broadway,
New York City, N. Y.,
July 15, 1936, 10 A. M.

Met pursuant to notice, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., R. J. MARTIN, Esq., and A. G. SEIDMAN, Esq., attorneys for the Federal Trade Commission.

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SUNDHEIM, FOLZ & SUNDHEIM, Esqrs., for Lit Brothers of Philadelphia (Philadelphia, Pennsylvania), by SYLVAN HIRSCH, Esq., of counsel.

MILTON C. WEISMAN, Esq. (1450 Broadway, New York City, N. Y.), GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., for the Fashion Originators Guild of America.

DURYEA, ZUNINO & AMEN, Esqrs. (20 Exchange Place, New York City, N. Y.), S. S. DURYEA, Esq., G. C. HECK, Esq., of counsel, for G. H. Conze.

SAUL, EWING, REMIC & SAUL, Esqrs. (301 Pickard Avenue, Philadelphia, Pa.), by ALAN S. OLMSTEAD 2ND, Esq., of counsel, for John Wanamaker.

GLEASON, McLANAHAN, MERRITT & INGRAHAM, Esqrs. (40 Wall Street, New York City, N. Y.), JOHN W. SIMPSON, Esq., ROBERT R. BRUCE, Esq., WALTER GORDON MERRITT, Esq., of counsel, for National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt.

455 REED, SMITH, SHAW & CLAY, Esqrs. (747 Union Trust Building, Pittsburgh, Pa.), J. H. BEAL, Esq., of counsel, for Joseph Horne & Co.

GOLDWATER & FLYNN, Esqrs. (60 East 42nd Street, New York City, N. Y.), MONROE GOLDWATER, Esq., NATHAN GOLDSTEIN, Esq., STANLEY KAUFMAN, Esq., of counsel, for Textile Affiliates.

PROCEEDINGS.

Examiner Bennett: Gentlemen, are you ready to proceed?

456 Mr. Haycraft: May it please the Examiner, it is just 10 A. M., and I notice that the principle attorneys for the principal respondents are not present.

Examiner Bennett: They are not here yet?

Mr. Haycraft: No, sir. I had a conference with them yesterday afternoon, and they asked that this hearing might be held over until 10.30, as it was impossible for them to get here at 10 o'clock this morning.

Examiner Bennett: Shall we wait until that time?

Mr. Haycraft: I think it would be well to wait a few minutes longer.

Examiner Bennett: That is satisfactory. We will recess for a few minutes.

(Whereupon a brief recess was taken, whereupon at 10.30 o'clock A. M. the hearing was resumed as follows:)

Examiner Bennett: Gentlemen, come to order, please.

This proceeding in the Matter of Fashion Originators Guild of America, Inc., Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild, Ladies' Ready-to-Wear Guild of Baltimore, National Federation of Textiles, Inc., their officers and so forth, under Docket No. 2769, is set for hearing at this time and place: Counsel appearing for the Federal Trade Commission are E. F. Haycraft, Esq., R. J. Martin, Esq., and A. G. Seidman, and for the respondents Milton C. Weisman, George Feldman, Herbert S. Keller, for the Fashion Originators Guild of America; John W. Simpson, Robert R. Bruce and Walter Gordon Merritt, for the National Federation of Textiles, Inc., Peter Van Horn and Irene L. Blunt; for Lit Brothers of Philadelphia, Sylvan Hirsch, Esq.; for John Wanamaker, Alan S. Olmstead 2nd, Esq.; for Textile Affiliates, Monroe Goldwater; for G. H. Conze, S. S. Duryea and G. C. Heck; for Joseph Horne & Co. of Pittsburgh, J. H. Beal.

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Mr. Haycraft: Mr. Examiner, it has occurred to me that, because of the size of this case and the number of respondents involved here, that it might be well if the Commission's counsel make a brief statement as to what is involved in this case, and what issues we feel are raised by the pleadings here.

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Examiner Bennett: Yes, I think so.

Mr. Haycraft: To that end, I wish to state that the Fashion Originators Guild of America, Inc., is an association primarily of dress manufacturers. The other guilds

that are named in this complaint, the Commission's complaint, are what might be described as affiliated or subsidiary guilds of the principal guilds, or parent guilds.

Outside of the retail dealers, however, of dresses, women's and misses' dresses, located in Chicago and Baltimore and Minneapolis, there are also listed as respondents a number of department stores who have co-operated with the Guild in its complaint to prevent or eliminate what is known as the copying of styles, where a name has been given to it, properly or improperly, as style piracy. The various department stores that are named, are named as representing themselves and a certain large group of retail dealers that are co-operating.

Now, there are a large number of charges that are contained in the complaint. Answers, of course, have been filed by the various respondents to the issues that have grown out of these pleadings, and, according to counsel for the Commission, I believe they are as follows:

The first is whether the garments manufactured by the members of the Guild are in such a demand that they must necessarily be offered for sale by the public by any retail store intended to handle a complete line of ladies' and misses' garments. That is one of the issues that is involved here, to determine the effect of the action of the Guild, whether the retail dealers located throughout the United States with whom there is some sort of relationship charged by the Commission and denied on the part of the dealers, whether this relationship amounts to an understanding or agreement on the part of the retail dealers that they will not buy garments that are alleged to be copies of garments that are alleged to be copies of garments manufactured by the members of the respondent Guild.

I say that is rather an important issue in the case, whether or not this relationship that exists between the

Guild and the retail dealers who are co-operating with the Guild amounts to an understanding or agreement to do the things that they are doing.

Then there is a question of whether or not the activities of the Guild in relation to the retailers has any relation to the manufacturers who are not members of the Guild and do not register their designs with the Guild, amounts to what might be called a boycott. That is a charge in the complaint—whether or not the list of retail dealers exists that are not entitled to buy goods from members of the Guild because they do not co-operate; whether that list so furnished to the members of the Guild amounted to a blacklist; and, as charged by the complaint, as being a scheme, or part of a scheme, to boycott.

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Then there is the question involved as to the extent of co-operation of the textile manufacturers who manufacture the goods out of which garments are made by the dress manufacturers, and there is a question arising there as to whether or not the extent of the co-operation between those textile manufacturers and the Guild is a private conspiracy as alleged to boycott those manufacturers who are not members of the Guild.

Examiner Bennett: And that is the relation in which you bring in the National Federation of Textiles, Inc.?

Mr. Haycraft: That is right. They are known by the members of the Guild as the Textile Division, or group, of the Guild.

Now, then, of course there are a number of practices that are condemned by the local guilds, the Local Guild of Retail Dealers, that are involved; and the extent to which the Fashion Originators Guild of America co-operates with the local guild in enforcing prohibition of those local practices. And then, of course, there is the effect or issue as to the fact that this arrangement between the Guild and its manufacturers, and the one hundred textile manufacturers and retail dealers, what effect that has had upon

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those dealers and those manufacturers other than those participating in the plan, or in a conspiracy, as the Commission describes it.

I think that, as briefly stated, would give you an idea as to what the issues are in this case.

Now, I may have to add to that some of the minor issues that will come up from time to time; but those are the principal ones.

The first witness to be called by the Commission will be Mr. Albert M. Post, executive director of the respondent the Fashion Originators Guild of America, Inc.

467 Mr. Weisman: I believe that it might clarify the issues and the course of the proof if I were permitted to make a brief statement as to the chief respondent's position; that is, the Fashion Originators Guild of America, Inc.

Examiner Bennett: All right.

Mr. Weisman: At the outset, before I go into the formal position of rebuttal which the respondent will assume with regard to the proof in chief that counsel for the Commission has outlined, that it is his intention to adduce here I wish to make a formal reservation of all rights herein, and to state on the record that we are proceeding upon the express understanding that by proceeding we do not waive our right to object to the bringing of this proceeding or the decision of the Commission to proceed at this time.

468 Among other reasons for this reservation of rights, I wish to outline on the record that I believe and urge that the Commission is, at this time, by its own pronouncements and rulings, and by the rulings of the District Court, estopped from going on with these proceedings.

As I have read the complaint, the action is one or the proceeding is one instituted under Section 5 of the Act which reads and the nub of which is unfair methods of competition in commerce are hereby declared unlawful.

I believe there is no argument possible that in this case the only unfair method of competition that might be urged or that will be urged against the respondent herein is that the actions of the respondent are in restraint of trade, or tend to a monopoly. I do not believe it is necessary for me to urge upon this Court that it is the settled law that the words "unfair methods of competition" as used in this Act and as interpreted by the Circuit Court, various Circuit Courts of Appeal, and as affirmed by the Supreme Court, allègue to such restraints of trade as have been held wrongful or criminal or subject to damages under the Sherman Act and/or the Clayton Act.

In this case, prior to the institution of this proceeding, there was a suit instituted against the respondent in the United States District Court for the District of Massachusetts, alleging that these very practices were in restraint of trade. That Sherman-suit, the title of which was *Filene & Sons against the Fashion Originators Guild of America, Inc.*, and other respondents here, was an action brought under the Sherman Anti-Trust Law, which, though instituted by a private party, is in the nature of a public suit, and the Courts will so hold. In that suit, in which the very act of this restraining was examined in greatest detail, it was then before the Court, and the Court, by its findings of fact made upon the motion for a preliminary injunction, found that such actions were not in restraint of trade, and were reasonable and proper, in view of the circumstances.

That case took approximately thirty days to try. There were hundreds of exhibits. There were 1800 pages of testimony. We are now awaiting final determination, which we expect to have in the course of the next few days, with findings of fact and conclusions of law for a full and complete trial; and we urge and claim that the finding in that suit is binding by reason of the particular language of the complaint in this particular case.

And we say that that is the reason, one of the reasons, why this proceeding may not go on, and that the Commission is bound by this ruling that will be enunciated in that case if it shall so decide to reserve the right if, during this trial, the findings of fact are made, and as we believe they will be made passing upon these very acts and conclusions of law to submit those conclusions of law and findings of fact in this case, the proceeding is a bar hereto.

In a moment, I would like to read the present existing findings of fact and conclusions of law that have been made in that case on the motion for preliminary injunction, which I believe is binding and determinative to the issue herein.

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Mr. Haycraft: I object to that.

Mr. Weisman: May I not proceed uninterrupted, and have counsel wait until the end to interpose his objection?

Examiner Bennett: All right.

Mr. Weisman: I also wish to urge that the Commission is further estopped from proceeding in this case, by reason of the fact that the Commission heretofore, and in the spring of 1935, made a complete analysis and a complete examination of all the facts, circumstances, acts, deeds, and transactions of the Guild, and after the conclusion of such examination, writes a letter which I am going to offer in evidence, in which they stated that from such examination—of practices as they then existed and as they now are, with this exception—in other words, there was no retrogression from the situation, and that, by that letter, the Commission advises that there was nothing in our practice which, within the purview of the Act, was wrongful or harmful.

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I would like to advance at this time and for the purpose of the record read into the record the letter of the Commission of July 17, 1935.

Mr. Haycraft: That is objected to.

Examiner Bennett: You may formulate the objection. Let me see the letter, please.

(Mr. Weisman hands the letter referred to to the Examiner.)

Mr. Weisman: This is a photostatic copy of the record.

Mr. Haycraft: This letter does not relate to the matter of the proceeding. It is another matter entirely.

Mr. Weisman: Then that should not be conclusive but go to the probative weight of this proceeding.

Mr. Haycraft: No probative weight whatsoever, Mr. Examiner.

Examiner Bennett: The files were closed without prejudice, and the Commission actually acted in April, 1936, and I think the letter is irrelevant, as stated.

Mr. Weisman: May I call your Honor's attention, and I trust you will pardon me, for I am doing the best I can for my client, that the complaint in this case alleges, right through to the date of this letter, and I believe that in view of the fact that among other things—in other words, to give this Commission jurisdiction, there must be a public interest involved; and I think that, while it may not be determinative, there is certainly a probative weight to show that the Commission examining these acts which are charged in the complaint, expressed itself that there was, as late as July, 1935—that there was no public issue involved, and I respectfully urge that, for those reasons, I urge this. I hadn't called your Honor's attention to it before, that the acts alleged in the complaint cover the period that this letter covers. It is not as if they had charged us from and after July, 1935, with doing something which was contrary; but they say at that very time we were doing something, and in my statement to the Court I said to your Honor, even as to the acts which are charged as having occurred since July 17, 1935, the proof in this case will show that those acts are no wrongful acts in the light of what was done before that.

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If anything, our conduct subsequently was of an amelioratory kind, and one which lessened any possible claim of hardship of our action.

Examiner Bennett: Well, now, if you are going—the ruling stands as to an argument on the merits of the case. It is quite useless to make it at this time. If you want to call attention to any special features of the proof or something of that sort, I will be very glad to hear you but you are really wasting your time and the time of the hearing in making an argument on the merits of the case at this time.

479 Mr. Weisman: Well, anyway, may I mark this for identification?

Examiner Bennett: Beg pardon?

Mr. Weisman: May I mark this for identification?

Examiner Bennett: You may mark it.

Mr. Haycraft: I object to that at this time, Mr. Examiner. I think we should proceed in an orderly way, and let the Commission put in its case; and at the time we close our case I have no objection to the respondent putting it in evidence.

Examiner Bennett: Well, it may be marked for identification.

(The letter referred to was marked Respondent's Exhibit 1 for Identification.)

480 Examiner Bennett: Now, if you have any statement to make along those lines, I would be glad to hear it; but, as I say; going into the law, the merits of the case, is quite beside the point at this stage of the proceedings. I will go along as far as I can.

Mr. Weisman: I am quite sure that the Court is mindful of the great respect in which I hold it, and if I differ with the Court, as a practicing lawyer that is my duty, to present my beliefs and my position as a protagonist for the respondent.

Examiner Bennett: Surely.

Mr. Weisman: In that relationship I would just like to make one further brief claim before I come to the merits, and that is that I wish to urge at the outset that the Commission is further estopped from claiming that our coping with this unfair—with this matter of style piracy in this fashion, by reason of the fact that the Federal Trade Commission has itself recognized style piracy as an unfair method of competition, and in its Trade Practice Conferences through which the Commission has encouraged the formulation of rules of fair competition, it has itself provided the following:

“The practice of usurping design, style, or patterns originated by a competitor, and appropriating them for one’s own use within blank period after such origination, is condemned by the industries.”

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This appeared in the Federal Trade Commission publication entitled “Fair Trade Practices” on June 30th, 1933. This has been confirmed by various cases in the Circuit Court of Appeals, the chief of which is the Winstead Hosiery case. These are my formal objections to the proceeding and my reservation of rights.

I believe it would be well for me to say to the Court, by way of opening, the other things that presented themselves, and the background behind the position of the Guild.

The Guild was organized in 1932, prior to the organization of the Fashion Originators Guild. We will prove in this case that the industry in the higher-priced brackets, where there was style origination, was completely demoralized; that people were being daily or weekly or monthly driven out of business by the practice of these copyists. In a nutshell, and making it as brief as I can, a manufacturer who originates designs has a large overhead. It is necessary for him to employ designers; he uses high-class

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materials; he uses the best of labor. It is necessary for him to go to Europe to observe style trends. The testimony will develop that this costs—to produce a line costs on the average anywhere from \$20,000 to \$40,000 a season, and that there are two major seasons during the year, and approximately three supplemental seasons, so that the cost is tremendous.

485 The proof will further show that, when a manufacturer produces this line, he is merely producing something that he hopes will have a ready consumer acceptance; that is, that it will be able to sell; that, in order to produce such a line successfully to be in business, it is necessary for him to make, let us say, forty garments, which is known as a line. I think your Honor will know something about the dress business before this case is over.

Of these forty, possibly six or eight have a ready consumer acceptance, so that he must produce, if he is going to stay in business, he must recoup his investment out of the six or eight good ones. And when dresses are sold, they are never sold in large lots. The retailer comes in and he will buy ten different numbers, two or three of a particular number; and then, as those dresses move, as there is a consumer acceptance for them, then, and only then, does the manufacturer, the originator, begin to reap the benefits of his origination.

486 In other words, it is a question of reorder. When a retailer knows that dresses will sell, then the reorders come in.

Now, this style copying destroyed the only possibility—the only chance that the manufacturer had to recoup his investment, for, the minute it became apparent, or sometimes even before the manufacturer was aware that the style was a good one and had consumer acceptance, it was adapted, or stolen.

The proof will show in some cases it was stolen, robbery was committed; fraud was committed, to get that. There-

upon, the dress was copied down; if the dress was to wholesale for \$29.75, the copyist not having all of the expense, the capital investment, the experimentation that was necessary, the other thirty-four, let us say, ones that didn't have consumer acceptance, would thereupon copy it down and sell it, let us say, for \$22.50, depriving the manufacturer, the originator, of the opportunity to recoup its investment, to stay in business.

Thereupon, we will show that this wasn't an evil in itself which stopped there, but that it went right down the line. The \$29 dress was thereafter copied, first, by the \$22 manufacturer, and then by the \$17 and then by the \$10 and then even by the \$6 and so on down the line. We will show that this copying was the bane of the dress industry from every conceivable angle; from the angle of the manufacturer who was gradually and in great numbers being driven out of business; the originator; secondly, that it was injurious to the retailer, in that the retailer was injured by it beyond measure in that the minute he put a dress in his showroom or in his shop to sell, and put it in the window, if ten minutes later or ten hours later his competitor had a copy of the dress at a showing for six or seven dollars less, it not alone destroyed the value of the dress, and the retailer immediately had to take a loss thereupon, but it also destroyed the good will, the confidence of the store, that this evil ate not alone at the manufacturer, but at the retailer.

We intend to show still further that it was injurious to the consumer; that it destroyed in the consumer, first, the value of the purchase of the consumer—the value of what he bought; because, if the consumer bought from me to-day for \$22.50 and she saw it the next day for \$19 or \$18, her mind was unsettled.

We will show furthermore that it was injurious to the consumer in that it did not give the consumer something that was better than anything else for \$19. It didn't give

her a \$27 dress for \$19; but merely by reason of the fact that these copyists simulated our designs, used poor workmanship, used poor materials, gave to that woman not even a good value at the \$19, so that she was injured. We will also—

Examiner Bennett: I think you have gone along far enough in this character of address. You are going into an argument in the case, instead of giving a brief statement of what you intend to prove. I wish to point out that I will have to cut it off at this time, and go ahead with the case. I don't see that we are going to get anywhere by filling the record with an argument at this time. That is my ruling. You make a very definite character of statement, and I am not going to hear it any further.

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Mr. Weisman: I bow to the ruling of the Court, and I wish to say, in explanation of my rather lengthy statement, my brief experience with these anti-trust cases indicates—and I believe in some measure I was sustained in that by the rules of the Court, that the back history was always of great importance in determining the ultimate fact. I really thought that it might be of assistance to the Court. If the Court feels otherwise, however—

Examiner Bennett: Yes; but the background would be perfectly proper, but you are going into the merits of the situation.

Mr. Weisman: I will reserve any further statement.

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Mr. Goldstein: We represent the merchants, or the Textile Group, respondents in this action, and we wish to join with Mr. Weisman in his reservation of rights to produce testimony, and join with him in our objections to the further prosecution of this proceeding on the estoppel ground urged by Mr. Weisman.

ALBERT M. POST was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your full name, residence, and occupation, Mr. Post? A. Albert M. Post, 35 East 76th Street, New York. I am executive director of the Fashion Originators Guild.

Q. How long have you been occupying that position? A. Approximately two years.

Q. Can you give us the approximate date that you became associated with the Guild in that capacity? A. Why, not the exact date; but around the 20th something of September, 1934, I believe. 494

Q. And as such what have been your duties? A. Well, I am the administrative head of the Fashion Guild, if that answers your question.

Q. And by that can you elaborate somewhat upon what you do as the administrative head of the Fashion Guild? A. Well, I supervise the routine performance of the Guild's business; I act under the votes and consensus of opinion or actions of the board of directors of the various committees; I attend all meetings and hearings and trials.

Q. All right. Now, then, when you testified first as to the nature of the business of the Guild, let me ask you, in what business is the Guild engaged? A. Well, I should say that the best description I could give is that it is a trade association, in a way. It is not exactly that; but I imagine that that is the closest description. 495

Q. You have a constitution and by-laws? A. Yes.

Q. Do you have a copy of that with you this morning? A. I believe so, yes.

Q. Will you produce that at this time? A. (The witness produces a document.) Here it is. Here is the constitution and by-laws as of April 16th, I believe, 1936.

Q. That contains all of the amendments made since the original organization? A. Up to that date.

Mr. Haycraft: Without explanation, I offer this in evidence as Commission's Exhibit No. 1.

Examiner Bennett: It will be marked as Commission's Exhibit No. 1.

(The document referred to was marked Commission's Exhibit 1-A to 1-T, inclusive, and received in evidence.)

Mr. Weisman: It appears that these records—or this is not the complete by-laws. I am waiting to see whether or not there are some others, because the question was, "Have you got them up to date?"

Examiner Bennett: All right.

Mr. Weisman: Don't you want the by-laws as of to-day?

Mr. Haycraft: As of April 16th, the date of the complaint.

Examiner Bennett: The exhibit has been marked.

Mr. Haycraft: It consists of twenty pages.

By Mr. Haycraft.

Q. To your knowledge was this organization organized under the laws of the State of New York? A. I believe so.

Q. And known as a membership corporation? A. Yes, that is correct.

Q. I notice in the original—strike that out. I notice that there are certain amendments to the by-laws, beginning on page 17 through 20. Can you testify as to when those amendments were made effective? A. I shall be glad to look at them. I doubt very much whether I could state in a general way—except that they were made effective during my association.

Q. I want to lay the foundation, of course, for further testimony, so will you make that attempt? A. Page 17, did you say?

Q. Yes; beginning on page 17. A. Well, the first three, I would say, were prior to my association with the Fashion Guild. The last two—

Q. Well, take amendment No. 4. What do you say about that? A. Amendment No. 4? Wait a minute, now. That was prior to my association with the Guild.

Q. Do you know—have you any indication as to when that was passed? I notice there is a pencil notation on it. A. Yes. I notice that pencil notation. I don't know who put it on there; but I assume that might have been the date. It is April 8th, 1933.

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Q. Subject to correction, I want that explanation of the date as it appears on the exhibit as it is now, so I want the explanation of what that refers to. A. I don't know.

Mr. Weisman: He says he does not know.

Mr. Haycraft: We will proceed to the next, then.

Mr. Weisman: I think that is a sufficient answer.

The Witness: Well, the next one, I believe, was about the time I came in; although I am not certain of that. I remember some discussion about it; but whether it was passed or then passing, I do not recall.

By Mr. Haycraft.

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Q. There is a pencil notation there? A. There is.

Q. What is that pencil notation? A. October 15, 1934.

Mr. Haycraft: Will counsel for the respondent stipulate that those two dates represent the dates that those two amendments were respectively passed by the Guild?

The Witness: By the Guild, yes.

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Albert M. Post—For Commission—Direct.

Mr. Weisman: Just a moment. I am counsel. I don't know; so I won't stipulate that. If you want me to find out, if it is a fact, I will be glad to stipulate it. I don't know any more about it than you do right now.

Mr. Haycraft: I would like to have you find out.

Mr. Weisman: If you will suspend a minute, I will try.

The Witness: Your Honor, I would like to make one statement. I just recall—I think it was the month of October that I came with the Guild; not the month of September.

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Mr. Weisman: Then counsel for the Fashion Originators Guild will stipulate that Amendment No. 4 was passed on or about April 8, 1933, and that Amendment No. 5 was passed on or about October 15, 1934.

Mr. Haycraft: Thank you.

By Mr. Haycraft.

Q. I notice, according to this constitution and by-laws, Article 3 provides for three classes of membership, the manufacturers' membership, textile membership and affiliated membership; the manufacturers' membership being manufacturers of ladies' garments; the textile membership, textile merchants, and the affiliated membership, dealers and traders in articles used as accessories for ladies' garments or merchants of any ladies' wear, et cetera. I will ask you if you can produce at this time a list of the manufacturers of ladies' garments, the members of your organization. A. Yes, I think so. It takes a little time, because we have to look back to our letters and find out the code number, and then go to the files. You wanted that as of what date, Mr. Haycraft?

Q. April 16, 1936. A. What was that question again, please?

Albert M. Post—For Commission—Direct.

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Q. (The reporter repeated the last question as above recorded.) A. Yes, here it is.

(The witness produced a document.)

Q. I want the record to show that I am asking this as of April 16, 1936. A. Yes. I am informed that that is April 16, according to your letter-request.

Mr. Haycraft: With that explanation and identification, I offer the exhibit in evidence.

Mr. Weisman: No objection.

Examiner Bennett: That may be marked as Commission's Exhibit No. 2.

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(The paper referred to was marked Commission's Exhibits 2-A and 2-B and received in evidence.)

Mr. Haycraft: That consists of two pages.

By Mr. Haycraft.

Q. I wish to call your attention to this Exhibit No. 2; you have a copy of it there? A. I don't think so. We didn't bring any extra ones.

Q. Well, I will hand it to you, and ask you the question: you have listed dress members, 73; affiliated members, 8; coat and suit members, 12; Junior Miss members, 8; textile associates, 7; sportswear members, 14; protective affiliates, 17; and then another group of listed concerns following that, under the protective affiliates, of 29 and 15, subdivisions, and my question is whether or not the textile associates that you have listed in this exhibit are manufacturers of ladies' garments, or are manufacturers of textiles used in the manufacture of ladies' garments? A. They are manufacturers of textiles.

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Q. And, in fact, they would comprise the second group of members—that is, the textile merchants listed in the constitution and by-laws that I called your attention to a moment ago; is that correct? A. Yes; that is correct.

Q. Will you explain for the record what the affiliated members are that are listed as eight manufacturers of ladies' garments? How do you distinguish them from your dress members that you have there listed? A. Well, in the actual Guild set-up, the difference between affiliated members and the regular members, in so far as dress manufacturers are concerned, or people making dresses, was that they had a separate division within the industry and within the Guild. In other words, whatever they may have been on that list that you refer to, Junior wear manufacturers, or sportswear, they formed a division within the Guild.

509 Q. All that is true with respect to the coat and suit members, the Junior Miss members, and so forth? A. Yes.

Q. But what about those members that were located in other cities? A. I believe they were called affiliated members.

Q. And are so designated in this exhibit? A. I believe so. Also, the Protective Affiliated Group were known as affiliate members.

Q. That was—you had in mind a moment ago—I think you had that in mind? A. Not entirely; because, with the sportswear and cloak and suit people, they were also affiliated members.

Q. They are not so designated in this exhibit, Mr. Post. A. They are designated as sportswear members.

Q. Sportswear, Junior Miss? A. That is right.

Q. Our next question was going to relate to the protective affiliates; how do you distinguish between your regular membership and these particular divisions? A. What is the distinction?

Q. What is the distinction between the protective affiliates? You have one group of members of Dress Creators Guild—that is 17 members, and then another group of 29, and another group of 15; now, will you tell us, so the record

will show, what the distinction is between this group that I called your attention to, and your regular members, your other members? A. Yes. I think Mr. Haycraft, that you are a little confused between two classifications of affiliated memberships.

Q. I am, Mr. Post. A. Then there are protective affiliates.

Q. I don't think I am; but if I am, I would be glad to have you clear it up. A. There are protective affiliate members. They are members who joined the Guild for the purpose of style-protection. They are in no way associated with the Guild in any other activity, except those which pertain to style protection.

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Q. And that includes all that you have listed under that caption? A. Under the caption of protective affiliates.

Q. Yes. Right now is there any further distinguishing characteristic between the protective affiliates and your other members? A. I am afraid that I do not understand your question.

Q. Is there any distinction as to the price of garments that they manufacture, as a usual proposition? A. Well, they happen to manufacture in the lower price range, if that is what you mean.

Q. Yes. A. Well, that is correct.

Q. And can you testify from this exhibit as to the price range of these various groups of manufacturers, or the various group manufacturers? A. I will try.

Q. Will you do that? A. You are talking about this group under the caption, protective affiliates; is that right, Mr. Haycraft?

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Q. Take from the very beginning; the first page of that exhibit where you have the list of dress members. A. You want to know the price range?

Q. The price range.

Mr. Weisman: I object to that, unless this witness will testify, unless he is qualified—unless he

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knows what these hundred-odd manufacturers charge for their respective garments. I mean, obviously, it is a question which appears that nobody could know, except the manufacturer.

Mr. Haycraft: I object to that, Mr. Examiner. The witness can testify as to whether he knows or not.

Mr. Weisman: You didn't ask him whether he knew. You asked him whether he could testify to the price at which these people sell their garments.

Mr. Haycraft: Well, as a matter of fact, let the witness tell what he can or cannot, instead of counsel.

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Mr. Weisman: I object to it on the ground that there is no foundation for the question. When a witness who is a lay witness is asked a question, "What is the price that these people charge for their garments?" without the foundation being laid as to whether he knows, he obviously gives a guess, and we have a guess in the record.

Examiner: Bennett: Do you know as to the price range?

The Witness: Well, I don't know, no.

Examiner Bennett: You haven't any means of finding out?

The Witness: I have means.

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Examiner Bennett: That isn't part of your duties?

The Witness: No. There are some parts that I do know. I mean, when you hand me the whole list, I don't believe that I know the price range of all these things. I know some of them.

Examiner Bennett: You can give some of them?

The Witness: Surely.

Examiner Bennett: Well, then, just state what you know.

By Mr. Haycraft.

Q. Do the best you can on that.

Mr. Haycraft: And I might state for the record, Mr. Examiner, that we had that information during the course of the investigation coming from this office, and I do not know whether Mr. Goldby or their associates—but somebody gave that to us.

A. Isn't it possible that whoever gave it to you looked it up at the time?

Q. I suppose so; but I will ask you to do the best you can on it. A. All right.

Mr. Weisman: Wait a minute. I object to his doing the best he can, unless, by doing the best he can means that he can answer as to those he knows; not to do the best as to those that he does not know.

Examiner Bennett: That is true.

By Mr. Haycraft.

Q. Let me put it this way; I will obviate the necessity of further discussion on that, and ask the witness if he will, during the recess, take this exhibit, and consult his associates, and indicate thereupon, immediately after the name of the various manufacturers, the price—the general price range of the dresses they manufacture, so that they may be divided up.

Mr. Weisman: I object to that. That won't make it any better; if he marks it down and he does not know. If my friend wants this information, I am anxious to get the record as accurate as possible, and I don't care where the chips may fall. I want it right. I will agree that, by to-morrow, we will communicate with these manufacturers and find out what their price range is, and then we shall

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have testimony that I think has some probative force; but I don't want him to go out and guess during the recess, and then write something down.

Examiner Bennett: Unless he has a record of it. If he has a record of it—

Mr. Haycraft: As I said a moment ago, we have already been furnished this information by this witness' office; why go into all this mystery now?

Mr. Weisman: There is not any mystery. You were furnished a guess that was not under oath—what somebody thinks might be the case. Now, I don't want to try a case on that kind of evidence. If I am here to meet a charge, I want to meet a charge.

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Mr. Haycraft: We didn't ask for guesses, Mr. Examiner. We asked for accurate information, and we assumed we had it and based our case on that.

The Witness: I haven't got that.

Examiner Bennett: Give what you have. I say, let us see what you have. Give us what you have.

The Witness: Yes, sir.

By Examiner Bennett.

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Q. Concerning this price information, what was your function, the function of your association, your office, with regard to price information of the kind asked for? That is, did you get it in the regular course of your activities from manufacturers? A. No, sir. The only time we get any such information is the time when application is filed. We ask that as a part of the application as to the general price range they make, and that may consist of four answers; but we accumulate no information on prices whatsoever.

Q. Yes; but you have that information as to price range that comes to you in due course in laying that number in?

A. At the time, yes.

Examiner Bennett: Is that what you want?

Mr. Haycraft: Yes, that is what I want.

Examiner Bennett: All right; he is competent to produce that, and he will produce it. If you want to contradict it, right.

Mr. Weisman: we will get it and offer it, not as to what these men actually manufacture, but that they said was their price range at the time they made application to the Guild.

Examiner Bennett: That is all we want.

Mr. Haycraft: That is all that is necessary.

Mr. Weisman: Well, we will furnish you with that information. Thank you.

Examiner Bennett: If you will get that, please.

Mr. Haycraft: I will pass that for the time being, it being understood that it will be furnished at a later date.

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By Mr. Haycraft.

Q. Now, as to the third classification of membership, that of dealers and traders in articles used as accessories in ladies' garments, and merchants of ladies' wearing apparel commodities, et cetera, I notice that you have defined in Section 5 of your constitution and by-laws "any dealer, or trader in the articles used as accessories to ladies' garments, or any merchant of any ladies' wearing apparel, whose reputation and standing shall have first been approved by the Membership Committee, and who otherwise complies with the organization's requirements, shall be eligible for membership as an affiliated member."

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Now, can you testify as to the affiliated membership under that article as of April 13, 1935? A. Well, you better let me read that article, and just see what it is. Well, under that affiliated membership, I don't believe we have any members. I do not believe so.

Q. How long has that been true? A. I don't recall any members, dealers, in articles other than textile people; and they are provided for under textile membership. There may be some within the Textile Division.

Q. No; this refers to dealers and traders. A. Dealers and traders?

Q. Dealers and traders. A. We have never had any membership.

Q. Dealers or merchants of ladies' wearing apparel. A. Never had any such membership, that I recall, or have heard of.

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Q. Do you keep in your files a list of retail dealers who are co-operating with the Guild in any way? A. Yes.

Q. How many of such dealers did you have in your list as of April 16, 1936? A. Well, I cannot answer that, except by approximation. Shall I answer it that way?

Q. What do you mean by "approximation"? A. Well, there is somewhere between 12,000 and 12,500. Whether it is the exact number—what the exact number is on a certain day, I cannot tell you.

Q. What sort of a record do you keep of those dealers? A. There is a card file.

Q. A card file? A. Yes.

Q. In your organization, when do you make a card file of a retail dealer? A. We make a card file—you mean when we make a file, or when we make a card?

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Q. When do you make the card that goes into the file? A. At the time that the retailer indicates to us what their policy is regarding style protection and style piracy.

Q. Do you have any forms approved by the Guild and submitted to prospective—strike that out—to retail dealers soliciting their co-operation in that respect? A. Yes.

Q. Will you produce at this time all such forms that have been in use by the Guild for that purpose? A. Yes; I believe these are copies of all the forms that were ever used.

Q. Prior to the dates—approximate dates—that those forms were used, the respective forms that you have? A. No, I cannot testify to that; but I can look that up.

Q. Can you testify that some time prior to April 16, 1936, one or all of these forms have been used? A. No; there is one there that I don't think was used prior to April 16th. That is one that the—

Q. (Interposing) Well, the one that you just called my attention to was not used prior to April 16th, 1936, marked 2-B? A. That is right.

Q. And the others, they were; is that right? A. That is right, yes.

Mr. Haycraft: I ask that these papers which the witness has handed to me, be marked as the next Commission's exhibit, each one to take a separate letter. 530

The Witness: Mr. Haycraft, I believe there was a declaration that was used by some of the officers, that apparently was not included in this thing, because you asked for stores, I think; in the letter you asked for that; but I will be glad to get that one at the next session.

Mr. Haycraft: All right. Make a separate exhibit of those.

The Witness: You asked merely for the forms we used, and not necessarily as to the individual statements.

Mr. Weisman: It has been suggested that these be marked 3-A, B, C, D and E. 531

Examiner Bennett: Very well. They will be received in evidence.

Mr. Weisman: No objection.

Examiner Bennett: There is no objection, and they will be marked as Commission's Exhibits 3-A, 3-B, 3-C, 3-D and 3-E.

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(The papers referred to were marked Commission's Exhibits 3-A, 3-B, 3-C, 3-D and 3-F respectively, and received in evidence.)

By Mr. Haycraft:

Q. Is there anyone in your organization, Mr. Post, who could testify as to when these respective forms, 3-A to 3-E, were put in use and the circumstances? A. No. But I believe that, by looking in our files, we could get an approximate date from those that were signed at that time. If you want that, I will be very happy to get that information.

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Q. Yes. I might inquire as to whether or not your minutes of any of your committees might show that. A. I don't think so, except for that one ten-point one. I believe that one was specifically approved by the board.

Q. And—that is, 3-E was? A. Yes, I think so.

Q. Well, we will refer to that one later, then. A. Yes.

Q. Now, then, as I understand your testimony, if a dealer signs any of these forms that were in use at the time they were effective, his name was placed on a card; would that be automatic, or would you or someone in your organization pass upon the admissibility of that particular declaration or statement? A. Oh, no. We accepted the signed declaration without question.

Q. No investigation? A. Investigation of what?

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Q. By you or anyone in your organization? A. Well, I don't know exactly what you mean by "investigation."

Q. Well, to ascertain whether or not the organization signing that was what it purported to be. A. What the organization was?

Q. Yes. A. Well, if you will notice, in the left-hand corner it says the firm submitting the declaration—it shows what the firm was, and, therefore, they came in to us from our own members, and they had been in contact with the stores, yes, if that is what you want.

Q. Yes. That is what I want to get at, exactly. A. Now, of course, you understand that those are the forms, and that there are many letters.

Q. Well, let's get the forms first, and then take the letters later. A. All right.

Q. Now, then, these forms, when signed by a dealer, were presented to you—your organization—by some member of your organization. Is that correct? A. That is correct; not always, because sometimes the store would sign directly in our own office; our representative.

Q. And you would pass on it yourself? A. There is nothing to pass on, except whether or not the person in the office is truly a representative of that store; that is all.

Q. Did that—while you were executive director of the organization, did it come within your duties to receive these declarations? A. No; except, speaking generally, that they were received in an organization for which I was responsible; but I didn't receive them myself.

Q. You didn't receive them in all cases? A. I didn't.

Q. In all cases, they didn't pass across your desk? A. No; the routine was that they did not pass across my desk at all.

Q. Who did receive them and have charge of the filing of them? A. The secretary to Mr. Golby.

Q. And what was the next step that was taken in respect to the information contained in these declarations?

A. Anything other than the filing of the name of the dealer?

Q. Yes. A. Well, a card would be made out and then duplicated for each of the files of our members.

Q. Each file of your members? A. For each of the individuals; for each individual file of each individual member.

Q. In other words, every dress manufacturer, Junior Miss, or Coat and Suit Member, of your organization, received a duplicate card containing the name of the

dealer who signed this form of declaration and co-operation? A. That is right; and the Protective Affiliates.

Q. And the Protective Affiliates as well, when they became members? A. That is right.

Q. By the way, when did they become members, the Protective Affiliates? A. I think July 1, 1935, was the first group of Protective Affiliates; I believe that that is correct.

Q. Was there any particular color assigned to a card that was made up from the names of dealers signing these forms of declaration or co-operation? A. Yes.

Q. And what were the colors? A. Well, there were white cards, or yellow cards, and green cards.

Q. What was the distinguishing feature? Why was it yellow or white or green? A. I am not sure what the distinction between the white and the yellow was. It was just the acknowledgment that it was this store's policy to protect goods; the green cards were retailers who were signed up on the piracy agreement, but who operated in apartment house shops, or something like that, which the Fashion Guild members did not care to do business with; but that again, as I told you before, in distinguishing between the Protective Affiliate membership and the regular membership, that was not binding upon them.

Q. In other words, the green card was not furnished to the Protective Affiliates? A. The green card was.

Q. The green card was? A. Yes.

Q. Furnished also to the others? A. Furnished also to the others, yes.

Q. What was the difference, then, in the treatment of the information on the green card by the two groups? How did your members treat the names on the green cards? A. My recollection is that the regular members did not sell the green cards, and the affiliated membership, or the Protective Affiliated membership, did.

Q. To refresh your recollection, was not the yellow card a member of some local retail guild? A. I do not think so. I do not think that that was that difference.

Q. Can you consult your associates at this time, and testify as to that? A. Yes, I will. Well, let's take one at a time. The white card is a member of a retail guild, and the yellow card is a retailer who is co-operating on piracy, but not a member of the local guild. The green card is—well, the green card apparently is a retailer in a city not a member of the local guild, but he might be in an apartment house shop, or something like that, which the membership do not sell.

Q. Now, who determines into which category this protective retailer would go, as to whether he was to have a white card or a yellow card or a green card? A. Well, the first distinction, of course, between members of a retail guild is very easy, because we have the membership of the retail guild, and that becomes very easy. The second distinction was that we would ask them, or somebody would ask them, or we have maps in our office of many cities under the zoning laws, and they would be checked; and in this industry I think that you pretty generally know.

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Q. Who determined that in your organization? A. Whoever handled the original declaration, they would tell us the character of the business.

Q. What I am trying to find out is, did you at any time have anything to do with saying whether or not the name of a dealer signing one of these declarations of co-operation would be given a green card or a yellow card or a white card? A. I think Mr. Golby handled that.

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Q. Mr. Golby? A. Yes.

Q. Under your direction? A. Well, I would know of it occasionally; if something came up that he raised a question about; but ordinarily—

Q. If there was any dispute about it? A. Any question about it, it would come to me.

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Q. Now, just a moment, about these retail guilds. I think they have been mentioned. Perhaps we had better go into that a little bit.

(Discussion off the record.)

By Mr. Haycraft.

Q. Will you describe, Mr. Post, the retail guilds that are associated with the Fashion Originators Guild?

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Mr. Weisman: I object to the form of the question as incompetent, immaterial, and no proper foundation laid in the first place. It does not appear that any retail guilds are associated with the Fashion Originators Guild. That calls for a conclusion of this witness; and, furthermore, obviously, this witness could not know. He has not been asked whether he knows anything about these other guilds; or how their formation was undertaken. He is asked for something—and I object to both the form and the substance of the question.

Examiner Bennett: Please read that.

(The reporter read the last question as above recorded.)

By Mr. Haycraft.

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Q. I withdraw that question. You have been talking about retail guilds in your testimony. What are they?
A. Associations of retailers.

Q. Located where? A. Well, there is one in New York, one in Chicago, one in Minneapolis, and one in Baltimore. I believe some—or, rather, one in Philadelphia. That is all that I can recall.

Q. Can you give the names of those guilds? A. New York is The Uptown Retail Guild; Chicago is the Michigan Avenue Guild; Baltimore is the Baltimore Ready-to-Wear Guild; Minneapolis is the Minneapolis Fashion Guild, I think.

Q. Philadelphia? A. Philadelphia is the Philadelphia Something-or-other. I don't know; probably the Philadelphia Guild.

Q. Can you give the approximate time that they were organized? A. No, I cannot.

Q. Is there any relationship between them and the Fashion Originators Guild of America? A. Relationship?

Q. Yes. A. I think two of them, Minneapolis and Chicago, have contracts with the Fashion Guild.

Q. Does the Baltimore? A. No.

Q. Did it ever have? A. Yes.

Q. When? A. I believe the Baltimore contract expired December 31st, 1934.

Q. Have the terms of that contract been followed or observed in any way since that time?

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Mr. Weisman: I object to that. That calls for a conclusion of the witness, referring to a document not in evidence. How does he know? How do we know what the terms are, or how can we tell whether they have been followed? It is a conclusion of law anyhow, and that is what most of the courts are all the time trying to find out—obviously a witness cannot testify to it.

Examiner Bennett: Well, I think you will have to make a better foundation for that. I will sustain the objection.

By Mr. Haycraft.

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Q. What changes, if any, took place between the Baltimore Guild and the Fashion Originators Guild subsequent to December, 1934?

Mr. Weisman: I object to that as having no proper foundation laid, and as being immaterial. We haven't been shown what the materiality is of

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the question, or what the contract was, or what the agreement was. It is rather putting the cart before the horse.

By Mr. Haycraft.

Q. I will ask the witness to produce at this time an agreement that is referred to in his testimony. A. (The witness produced a document) Here is the Baltimore contract.

Mr. Weisman: Wait just a minute. Is that the original contract?

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The Witness: That is a copy of the original contract.

Mr. Weisman: Where is the original?

The Witness: I haven't got the original.

Mr. Haycraft: Well, what is that?

The Witness: You asked me for the Baltimore; is that right?

Mr. Haycraft: Yes.

The Witness: I find I am in error as to the expiration date; the expiration date is December 31st, 1935, instead of, I think I said, 1934.

By Mr. Haycraft.

Q. That is the Baltimore Guild? A. The Baltimore Guild.

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Q. You make that correction in your testimony, do you? A. How do I do that?

Q. I say, you wish to make a correction in your testimony? A. Yes, I do.

Q. Now, do you have the contracts? A. Yes. You asked me for that.

Mr. Weisman: The witness produces copies of an agreement between the Ladies' Ready-to-Wear Guild of Baltimore, Inc., and the Fashion Originals.

tors Guild of America, Inc., dated the 30th day of September, 1935; also an agreement between Fashion Originators Guild of America, Inc., and the Minneapolis Fashion Guild, dated August 26th, 1935; also an agreement between Fashion Originators Guild of America, Inc. and Michigan Avenue Guild of Chicago, Illinois, dated the 10th of May, 1935.

Examiner Bennett: At the request of the Commission?

Mr. Weisman: All produced at the request of the Commission.

By Mr. Haycraft.

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Q. I will ask the witness if these are, to his knowledge, correct copies of the originals in the files of the Fashion Originators Guild? A. I believe so.

Q. They were produced pursuant, I mean—were they prepared pursuant to your instructions? A. That is correct.

Q. Did you have them checked against the originals? A. I did not check them.

Q. Did you have them checked against the originals? A. No, I do not think so.

Mr. Haycraft: There will be no objection to that?

Mr. Weisman: No; we will stipulate that they are correct copies.

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Examiner Bennett: All right.

Mr. Haycraft: Am I to understand that the Minneapolis agreement and Chicago agreement are now in effect—still in effect?

The Witness: Minneapolis and Chicago are now in effect, yes.

By Mr. Haycraft.

Q. You have no agreements with the Philadelphia? A. No, sir.

Q. With this explanation and identification—

The Witness: I believe that is right.

Mr. Haycraft: Well with this explanation and identification, I will offer these three agreements in evidence, taking the next exhibit numbers in the order presented.

Examiner Bennett: Take the next three numbers, and give each page a number. There are six pages in each exhibit, I believe.

Mr. Haycraft: Exhibit 4 is the Minneapolis agreement. Exhibit No. 5 is the Michigan Avenue Guild; and Exhibit No. 6 is the Baltimore agreement. Exhibits 4 and 5 have each six pages, and Exhibit No. 6 consists of five pages.

(The papers referred to were marked Commission's Exhibits 4-A to 4-F, inclusive, 5-A to 5-F, inclusive, and 6-A to 6-E, inclusive, respectively, and received in evidence.)

By Mr. Haycraft.

Q. Did you have anything to do with the negotiation of these agreements? A. Yes.

558 Q. What did you do?

Mr. Weisman: For the purpose of clarity: We have three different agreements negotiated with three different people at three different, widely separated times. I do not want to object, but I think we shall be able to understand the situation better if we direct ourselves to one agreement at a time.

Examiner Bennett: All right.

Mr. Weisman: Does not your Honor feel that way about it?

Examiner Bennett: Yes. I shall be glad to do it in that way.

Mr. Haycraft: What did you have to do—

Mr. Weisman: I merely objected to talking of the three at the same time.

Examiner Bennett: Take them up seriatim.

Mr. Weisman: I thought the Court had sustained me; otherwise, he cannot give an intelligent answer, for as to what he might have done with one, he might not have done with the other.

By Mr. Haycraft.

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Q. What did you do? A. Well, I understand that there is a question—that it seems to me—

Q. You are instructed to take them up in the order in which they were given.

Mr. Weisman: No—you were instructed to ask the question seriatim.

The Witness: What is the order, please?

Mr. Haycraft: Take the Michigan Avenue Guild first.

A. Well, the Minneapolis Guild—

By Mr. Haycraft.

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Q. Well, take the Minneapolis Guild. A. Well, the Minneapolis Guild, as the administrative head of the organization, I talked to our attorneys; talked to the head of the Guild, drew up the preliminary points on which we were in agreement prior to the draft of the contract being drawn and any disagreement—things that were not clear in the draft as they came through; wrote letters or corresponded on them, attempted to adjust the differences or misunderstandings or confusions, whatever they might have been.

Q. You had correspondence with the Minneapolis dealers who entered into the agreement? A. With the head of the Minneapolis Guild, yes.

Q. Who is that? A. Roy Bjorkman.

Q. And this agreement was a culmination of those negotiations conducted? A. Conducted—negotiations and conferences, yes.

Q. Now, I will ask about the Michigan Avenue Guild, Mr. Post. A. Well, generally, the procedure was the same; although in Minneapolis—in Chicago, rather, I met a man named Gleason who was the head of the Guild at that time, and their attorney a man named Marshall, and, I believe, the other officers of the Guild at different times may have either written or corresponded or come in to see us; or else we saw them in Chicago.

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Q. This agreement was the culmination of the negotiations you had? A. That is right.

Q. Both oral and written? A. That is right.

Q. And what about Baltimore? A. In Baltimore, the head of the Guild, Mr. Charles Hutzler, and the negotiations were carried on in the main through him; although the vice-president, I think, is a man named Metzler—Alan Metzler, and he partook in some of it.

Q. And this agreement was the culmination of the negotiations which you had? A. Correct.

Q. Did you have authority to negotiate these agreements? A. To negotiate the agreements?

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Q. Yes. A. Well, if I were sure what the word "negotiate" means as you use it, I could answer it. I would have the authority to negotiate, yes; but not to approve the agreement.

Q. Who did have the final agreement—that is, the final authority to approve the agreement? A. The Board of Governors of the Fashion Originators Guild for our organization; and, I assume, for their organization, their board of directors.

Q. Now, referring back for a moment to the declaration of co-operation, the forms which have been identified here, Commission's Exhibits 3-A to 3-E, I notice that in each one of them there is an opening statement to the effect as follows: "We understand that the members of your organization"—strike that out. The declaration is addressed to the Fashion Originators Guild, and the opening statement reads as follows: "We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights of manufacturers in styles created by them, and will refuse to countenance so-called style piracy." I will ask you whether or not you are familiar with the way in which these dealers were made acquainted with that policy of the Guild?

A. What policy?

Q. That I just read to you; that they will recognize the property rights of manufacturers in styles created by them, and will refuse to countenance so-called style piracy.

Mr. Weisman: Wait a moment. I do not think that question is clear.

Mr. Haycraft: Strike out that question.

By Mr. Haycraft.

Q. It says "that the members of the Guild will confine their sales to retailers who recognize the property rights of manufacturers in styles created by them, and will refuse to countenance so-called style piracy." A. Now, let me see if I can understand that question again. Will you repeat it?

Q. (The reporter repeated the last question as above recorded.) A. Well, it seems like an awfully broad question; but there was publicity. There were meetings. We traveled around the country, held meetings in various cities,

the members of the Guild told it to their customers as they came in. Goodness, I don't know just how many different methods might have been used, or how many thousands of lines of newspaper copy were used by trade publications on the program.

By Mr. Haycraft.

Q. Did you get our circular letters? A. Yes, I think we did, yes.

Q. Did you furnish information to trade magazines to that effect? A. I should not wonder.

569 Q. Were addresses made at meetings of retailers by yourself or Mr. Rentner? A. Yes; they were—since I have been with the Guild, and by Mr. Rentner prior to that.

Q. Mr. Rentner is the president of the Guild? A. Yes.

Q. He was at the time that you went with the Guild? A. He still is.

Q. I say, he was at the time that you went with the Guild? A. Yes.

Q. Do you have with you to-day any of the circular letters or copies of the newspaper or trade magazine articles with respect to the publication of such a policy on the part of the individual members of the Guild? A. Well, if they are among the letters that you asked for, I have them with me. I do not recall.

Mr. Weisman: They were not among the letters that you asked for; but I will say that, if you will give us a reasonable time, even though you have not asked for them, we shall be glad to bring them in. Unfortunately, you asked for so many things that, to get together all of the things you asked, took pretty nearly all our time.

Mr. Haycraft: I will offer this for identification.

Mr. Weisman: I will ask to read this five-page letter. It will take a few moments.

Examiner Bennett: Yes; all right.

Mr. Weisman: I have no objection to the introduction into evidence of this address made by Mr. Maurice Rentner, chairman of the Fashion Originators Guild, on the topic of "Fashion Originators Guild and its Success in the Future," delivered at the convention of the National Retail Dry Goods Association in Detroit, Tuesday, January 16, 1934.

Examiner Bennett: You are examining that?

Mr. Haycraft: I offer it.

Examiner Bennett: That will be received as Commissioner's Exhibit 7.

Mr. Haycraft: That consists of five pages.

(The paper referred to was marked Commission's Exhibit 7-A to 7-E, inclusive, and received in evidence.)

By Mr. Haycraft.

Q. Were personal contacts made by yourself and others in your organization among retail dealers? A. Yes.

Q. Who else, besides yourself, was authorized to make such contacts? A. Contacts?

Q. Yes, sir; that is, calling upon retail dealers, in individual cases or in groups. A. I don't think that anybody was specifically authorized to do that.

Q. Well, was it customary for anybody else to do that, besides yourself? A. Well, Mr. Golby; he is the executive secretary; and Mr. Goldstein, who is in charge of our Piracy Department; Mr. Rentner as president has also done a good deal of that. There is a man named Morris Kaulman, who was executive director prior to my being with the Guild, who did a great deal of it. The various officers and members of the Board of Governors have, at different times, also, done it.

Q. Now, a while ago, in discussing these forms, you mentioned that some other forms were had with resident

buying officers, I believe, here in New York; did you have a form of declaration of co-operation to be signed by them?

A. I think so, yes.

Q. Do you have that available? A. I said that I would have that to-morrow.

Q. You will have it to-morrow? A. Yes.

Q. I did not ask for that. That is why it is not here now? A. Yes.

Q. Well, they represented retail dealers, did they not, Mr. Post? A. I do not believe that that is correct.

Q. You do not believe that that is correct? A. They represent—

575 Q. Retail dealers? A. Yes. But they are not retail dealers.

Q. But they are representatives of retail dealers? Is that it? A. Yes.

Q. You don't think—well, how many such organizations are you familiar with? A. What organizations?

Q. Buying; I referred to that a moment ago. A. How many?

Q. Yes. A. How many do I know of?

Q. Yes. That is it. A. Well, there is one organization known as the Association of Buying Officers that say that they have twenty-seven or twenty-eight members, all of whom are buying officers. I should say that I might know a couple of hundred of them in total.

576 Q. There are about that many buying officers in New York representing retail dealers outside of the city? A. Oh, I would not know about that.

Q. Can you state whether or not you have secured declarations of co-operation from any of these buying officers? A. Yes.

Q. And can you state which ones? A. Well, all that we do business with. I cannot tell you just which ones they are.

Q. Are they individual members represented by those buying officers? Have they signed declarations of co-operation of some kind—either a letter, or some form? A. I am sorry. I cannot follow your question exactly, I don't quite get which group—or which form you are talking about.

Mr. Haycraft: Read the question.

Q. (The reporter repeated the last question as above recorded.)

Mr. Haycraft: I will withdraw that question.

By Mr. Haycraft.

578

Q. Have the Retail Dealers whom these buying officers represent, signed a declaration of co-operation in some form or another, and indicated to you that they were co-operating with you in your style piracy campaign? A. Yes; some of them have.

Q. Some of them have? A. Yes.

Q. Well, is any agreement that you might have—no, strike that out. Have you obtained separate declarations of co-operation from the buying officers, as distinct from their individual members, the people that they represent? A. Yes.

Q. And that is the form that you are going to find for me to-morrow? A. Yes.

Q. Will you also at the same time be able to have or to testify as to the names of these buying officers that have indicated a desire to co-operate? A. Yes, sir.

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Q. Now, is it a fact that the business of the Fashion Originators Guild is conducted and controlled by the Board of Governors, as indicated in the constitution and by-laws which you have furnished here? A. No, I do not think so. Is that what is indicated?

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Albert M. Post—For Commission—Direct.

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Q. I am reading from it: "The management of the organization, and of all its affairs and property, shall be entrusted to 14 of its members as hereinafter set forth, to be known and constituted as a Board of Governors. The Board shall consist of all the following officers of the Organization. At least four additional members thereof shall be of the Textile Membership, who shall be honorary members only, without liability or power to make any decision or act for the organization, but with the privilege in their discretion of attending any meetings of the Board: (1) Chairman of the Board; (2) First Vice-President; (3) Second Vice-President; (4) Financial Secretary; (5) Recording Secretary; (6) Treasurer. Section 2. The Election of the Governors"— A. Well, that reading confirms what was my impression; the control of the Guild rests with its members, the Board of Governors acting on those things as they come up, and within certain bounds, I should say; but, in the final analysis, the control of the Guild rests with its members.

Q. Well, now, would you say that the functions of the Board of Governors as set forth—would you say that that was set forth in the language which I have just read?

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Mr. Weisman: Just a minute, please. I object to that as immaterial. The agreement speaks for itself, and the witness has already fully answered. The constitution and by-laws says that the management is with the board of directors. The witness was asked a question. He says it is true that the board of directors manages it, but the members control. I think that that is a complete answer. Now my friend is arguing with his own witness as to the meaning of the language which is in this document.

Examiner Bennett: Will you repeat that question, please?

(The reporter repeated the last question as above recorded.)

Mr. Weisman: The function of the Board of Governors is set forth there.

Examiner Bennett: I think I will sustain the objection in that form. I think it is proper for us to know the practice that has been followed.

Mr. Haycraft: Well, I will ask him whether or not, in practice, the Board of Governors manages the organization and the affairs and the property of the Guild.

A. In practice, the answer is yes, although it has been the practice of the Board of Governors of the Fashion Originators' Guild to refer to its membership any question which they think important, or in which there has not already been a previous determination which is a fair guide.

584

Q. And will we find the results of the deliberations and actions of the Board of Governors and the members in the minutes of the organization? A. Yes.

Q. Do you have those minutes here with you at this time? A. Yes.

Q. Will you now produce them? A. Mr. Weisman, I would like to point out to you that we have no copies of these minutes—most of these forms we had copies of; but we haven't of these.

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Mr. Weisman: Mr. Haycraft, could you defer your calling for this and overnight I will have a copy made. Obviously, I do not want to give you our minute book.

Mr. Haycraft: We do not want all your minutes, I don't think, quite.

Mr. Weisman: If you will tell us what you want?

Mr. Haycraft: I am going to indicate in the examination what minutes—

Mr. Weisman: We will get copies to the Commission of everything that is indicated. We do not want, however, to lose custody of this minute book.

Examiner Bennett: All right.

Mr. Haycraft: Let the record show that the witness has produced the minute book, and then we can make the selection.

By Mr. Haycraft.

Q. I will ask you to consult the minutes—the minute book that you have before you, of the members, first. A. The members?

587 Q. The members on June 20, 1932; and see if you have the minutes of a meeting on that date; a special meeting. I will withdraw that question. No—I will let that stand, I believe.

(The reporter repeated the last question as above recorded.)

Q. Have you got that? A. I have, yes.

Q. June 20, 1932? A. That is right.

Q. Do you find a reference in those minutes to the matter of apartment house retailers? A. I do, yes.

Q. A discussion? A. Yes.

Q. Now, at my request— A. (Interposing) I believe this is it.

Mr. Haycraft: Just a moment. Mr. Examiner, at my request, then, I ask that a copy of the minutes of the Dress Membership on June 20, 1932, be produced at the next hearing, and copies can be made, and, I understand, rather, in lieu of the original which the witness has just identified.

Mr. Weisman: Of course, we shall be very glad to do that.

Examiner Bennett: All right.

The Witness: Do I understand that this is the complete copy of the minutes, or just the thing you refer to now?

Mr. Haycraft: As far as I am concerned I do not care for anything except the reference to that; but I do not want to be placed in the position of taking excerpts, unless counsel for the respondent will agree that just that point shall be copies.

The Witness: If we are given a few days, we can get anything.

Mr. Weisman: We will produce that.

Mr. Haycraft: I think that we can save a little time, Mr. Examiner.

I have here extracts that have been made, and we will let the witness check them up against the original as we go along.

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By Mr. Haycraft.

Q. In connection with these exhibits, I would like to ask the witness to state for the record the practice of the Piracy Committee, calling his attention to the provisions of the constitution and by-laws with respect thereto, pages 10 and 11, which says:

"Section 1. The Piracy Committee shall consist of five members, the Chairman of which and two of the members must be members of the Board of Governors, but the remaining members need not be. This Committee shall have at least three members of the Manufacturers Membership.

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"Section 2. It shall be the duty of this Committee to investigate all complaints received by the organization regarding the piracy of styles, fashions, or textiles, and/or a violation of those matters, and things constituting the objects and purposes of this Organization, and, in its discretion, to exercise

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Albert M. Post—For Commission—Direct.

measures to abate the piracy. It shall be the duty of this Committee to render a written report of the result of its investigations to the Board of Governors with all convenient speed. The life of this Committee shall be for a period of one year.

“Section 3. Vacancies on the Piracy Committee shall be filled by a majority vote of the members of the Committee; but the candidates so proposed shall first be approved by the Board of Governors, and after election to serve until their successors shall have been elected.

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“Section 4. If two members of the Committee shall vote in the negative, such proposed nominee shall not be recommended to the Board of Governors for approval.”

My question is: What was the practice of the committee?

Examiner Bennett: Frame another question.

By Mr. Haycraft.

Q. I have read you—are you familiar with the provisions of the Piracy Committee, Article 9 of the constitution and by-laws? I will read that:

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“Section 1. The Piracy Committee shall consist of five members, the Chairman of which and two other members must be members of the Board of Governors, but the remaining members need not be. This Committee shall have at least three members of the Manufacturers membership.

“Section 2. It shall be the duty of this Committee to investigate all complaints received by the Organization regarding piracy of styles, fashions, or textiles, and/or a violation of these matters, and

things constituting the objects and purposes of this organization and in its discretion to exercise measures to abate the piracy. It shall be the duty of this Committee to render a report of the results of its investigations to the Board of Governors, with all convenient speed. The life of this Committee shall be for a period of one year.

"Section 3. Vacancies in the Piracy Committee shall be filled by a majority vote of the members of the Committee, but the candidate so proposed shall first be appointed by the Board of Governors and after election to serve until their successors shall have been selected.

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"Section 4. If two members of the Committee shall vote in the negative the proposed nominee shall not be recommended to the Board of Governors for approval."

My question is: Is it the practice of this organization of which you are an executive director to follow the provisions of the constitution and by-laws that I read to you in respect to the Piracy Committee?

Mr. Weisman: Now, I believe we have two questions there. I may be mistaken. May I have the stenographer read that? I believe Mr. Haycraft started out with one question by reading something, and when he got finished, he had another question.

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Now, obviously, if that is the situation, I want it corrected. I don't believe that two questions can be intelligently answered.

Examiner Bennett: Will you read that again, please?

(The reporter read the last question as above recorded.)

The Witness: I am familiar with the provisions in the constitution for that Piracy Committee.

Examiner Bennett: You are?

The Witness: Yes.

By Mr. Haycraft.

Q. Now will you answer the question as to whether or not the practice of the Guild is to follow out the provisions or to follow on the provisions provided in that constitution? A. Pertaining to that particular thing? Is that your question?

599 Q. It is. A. I do not think that that question can be answered. You have got to specify at what time that was the original constitution.

Q. Well, what was the practice when you went with the Guild in the fall of 1934? A. I am not sure how the committees of the Guild were functioning at that time.

Q. Well, who does know? A. Well, there was a constant evolution on that thing; and to take a particular time and say how were they functioning, or were they functioning in such and such a way, the only thing you can do on that is to go back to the records of the Piracy Committee and see how they were functioning as of any particular date.

600 Q. Well, don't you have any recollection as to how they were functioning when you first became associated with them? A. Well, I have a distinct recollection that they were not functioning the way that they are to-day; if that is what you mean.

Q. As to how they were functioning when you first became associated with them? What is your recollection as to how they were functioning when you went with them? A. That there were Piracy Committees; that they were selected by a method of what might be comparable to selecting arbitration committees.

Q. Who made the selection? A. The participating manufacturers.

Q. You mean the members of the Guild? A. Members of the Guild and non-members of the Guild; the people involved in the particular question of piracy on the individual garment.

Q. And of what were the committees then composed? That is, as to their ordinary walks of life, occupation, that is what I mean. A. Well, Mr. Haycraft; I think the difficulty is that there might not have been a routine method such as we have to-day; that some committees might have been composed of retailers; some committees might have been composed of manufacturers who were not members of the Guild; some committees might have been composed of Guild manufacturers. As I stated before, there was an evolution on this thing, and it is very difficult to put your finger on a particular point and say what you were doing then. I can say what we have been doing for approximately a year now when the present system was inaugurated. That is very clear.

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Q. Well, what were you doing before the present system was inaugurated? A. Well, I just said how they were selected at the time I came in. I think by a method of mutual agreement between the participating or involved manufacturers, as to whatever extent that was possible. They might have been manufacturers; they might have been retailers.

Examiner Bennett: And was it their practice to try individual cases? That is, to have hearings in individual cases?

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The Witness: Oh, yes; at no time did the Piracy Committee deal except with an individual case; an individual garment.

By Mr. Haycraft.

Q. Did they report to the Board of Governors? A. They made a report which, I believe, was submitted as part of the minutes for approval to the Board of Governors.

Q. Then did the Board of Governors take action on the report of the Piracy Committee? A. What period are you speaking of?

Q. When you first went with the organization. A. I do not think so.

Q. What was the practice? A. That their decisions were accepted by the participants unless one of them protested and then brought it to the Board of Governors; then the Board of Governors sat. It would function more or less as a board of appeal, if you will, from the decisions of the Piracy Committee.

605 Q. Then what was the outcome of—no, strike that. Did the Piracy Committee, when you first went there before the present set-up that you say has been in existence about a year—did they at that time investigate a particular complaint that was made and make a decision, and render the decision to the participants; that is, to the manufacturers involved? A. Yes.

Q. And then what happened, so far as the conduct of those manufacturers was concerned? A. Goodness, I cannot answer for each manufacturer.

Q. Did they accept the report of the Piracy Committee? A. I cannot answer that.

Q. Did the committee make any report at all to the Board of Governors as to what was the outcome of their deliberations? A. Well, they may have.

606 Q. Was there action taken?

Mr. Weisman: I have an objection to this line of inquiry. Does your Honor deem it material as to what used to happen a year ago, when the testimony clearly develops that that has not been done for a year, and is not now being done, and isn't the practice that was followed at the time of the filing of this complaint? I mean, it seems to me that it is clearly irrelevant and immaterial. I have not

thought to object because I was afraid that I would take up more time objecting than I would if I let him ask the question; but it seems that this matter is now going along, and I would like to have a ruling from the Court as to whether these actions, completely abandoned a year ago, not the matter or subject-matter of the complaint in this case, not participated in at the time of the filing of the complaint, upon which the direct testimony elicited by his own witness, shows that they have been abandoned over a year ago, whether or not any inquiry into that at this time is at all relevant or material. I think it is not; and I urge that counsel be requested to confine himself to such matters as are relevant and material.

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Mr. Haycraft: I suggest, Mr. Examiner, that we are entitled to show whatever this Guild may have done, from the time of its inception up to the time of the issuance of the complaint.

Mr. Weisman: Well, I don't think that that is at all the fact. As a matter of fact, in 254 New York, in the Coca Cola case, this particular query was passed upon, and it was there ruled that the plaintiff's position must be judged by the facts as they were when the suit was begun; not by the facts of a different condition at an earlier time. Now, obviously, if something was done—the witness has testified that this was an evolutionary process, and what happened a long time ago is of no materiality now. It takes up some time, but it does not get us anywhere on the ultimate decision that will be rendered here, I submit.

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Examiner Bennett: I recall that the Seventh Circuit came to a different conclusion in one of our cases. I am going to overrule your objection to that.

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*Albert M. Post—For Commission—Direct.**By Mr. Haycraft.*

Q. My next question, then, Mr. Post, is: Where a Piracy Committee found that the garment in question was a copy, what, if any, action was then taken by the Guild?

Mr. Weisman: May I correct the statement I made?

Examiner Bennett: Yes.

Mr. Weisman: It has been called to my attention that I said 254 New York; I was not aware of that. I meant to say 254 United States. It was a Supreme Court decision.

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Examiner Bennett: Yes, I see.

The Witness: Well, at the time I came into the Guild, where a garment had been adjudged a copy, sketches of that garment were sent out to various retail stores that were participants in the Guild program, calling their attention to the fact that the garment had been adjudged a copy.

By Mr. Haycraft.

Q. Now, you mean by participants in the program those who had indicated that they would co-operate with you in the program either by signing a form such as we have here, Commission's Exhibits 4, 5 and 6? A. That is correct.

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Q. 3-A to 3-F, rather—or in some other manner indicating that they were willing to co-operate? A. That is correct.

Examiner Bennett: What is the page number on that decision? Have you it?

Mr. Weisman: 254 U. S. 134, at page 147. I also understand that the language of this case was quoted with the approval—or with approval in Federal Trade Commission against American Snuff Company, C. C. A., October Term, 1935.

By Mr. Haycraft.

Q. What, if any, attempt was made to determine whether or not a co-operating dealer—I refer to them as that—those dealers whom we refer to, to whom these designs and so forth were sent, were co-operating in your program?

A. Oh, I don't believe any.

Q. At the time you first came with the Guild? A. That is right.

Q. Did there come a time when investigations were made? A. That is part of the evolution that I spoke about.

Q. When did that begin to take place? A. I should say around the first of January, 1935, we began the program of employing shoppers.

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Q. Employing shoppers? A. Yes.

Q. Will you describe the procedure in the employment of shoppers, just what was done in that respect by the Guild, and where? A. The procedure in employing them?

Q. Yes. A. Or the procedure of the shoppers? I do not understand your question, Mr. Haycraft. I am sorry.

Q. Who selected them? How many were selected? Where were they to operate? What were their duties? To whom were they to report—all those things. A. That is one question?

Q. One question.

Mr. Weisman: May I respectfully submit that that is hardly one fair question; that it ought to be broken up.

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Examiner Bennett: Well, all right.

Mr. Haycraft: I merely explained to the witness what I meant by "procedure."

Mr. Weisman: If that is what you mean by procedure, I object to the form of your question as being all-embrasive, and not subject to a simple answer, as testimony is supposed to be.

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Albert M. Post—For Commission—Direct.

Examiner Bennett: Well, you can ask him those separately.

Mr. Haycraft: I did not hear you.

Examiner Bennett: You may ask him those questions one at a time. The respondent's attorney objects.

Mr. Haycraft: Will you read the first part of that?

(Question repeated by the reporter as follows:)

"Q. Who selected them?"

The Witness: That is the first question?

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Mr. Haycraft: Yes.

A. In some cities we appealed to the organization, the retail groups; in some they were Guild, and in others there weren't any guilds; in other cities, either Mr. Goldstein, who had charge of piracy, or Mr. Golby, made a trip around with them and selected them. In New York, naturally, they were selected in the Guild office; so again there were, if you say who finally hired them, I suppose the Guild did. I suppose that is the answer: but they were referred to us by various retailers or manufacturers or members. I believe our girl in Chicago was recommended to us by some of our Chicago members.

618

By Mr. Haycraft.

Q. Who, you say, was placed in charge of that work? who did you say was placed in charge of that work—Mr. Goldstein? A. Mr. Goldstein is in charge of the piracy work, yes; special piracy work.

Q. Read the second part of the question.

(The reporter repeated as follows: "How many were selected, where were they to operate?")

By Mr. Haycraft.

Q. Where were they to operate? A. Any cities we could find any money to engage them.

Q. Can you testify now as to the principal cities where they were engaged during the year 1935? A. Yes. Boston, New York, Newark, Brooklyn—if that is a city; Philadelphia, Washington, Baltimore, Atlanta, Miami, Pittsburgh, Detroit, Chicago, Minneapolis, St. Paul, Rochester, Syracuse, Albany, St. Louis, Kansas City, Denver, San Francisco, Los Angeles, Houston, Dallas, New Orleans, Cincinnati, Louisville, Columbus, are as many as I think of at the moment.

Q. What were their duties? A. Their duties were to locate garments which had been adjudged to be copies, call them to the attention of the co-operating retailers, to request that they be removed from sale, and if they were not, to advise us to act in the matter of any local complaint that originated in that particular city. 620

Q. Now, when you say "adjudged to be copies," adjudged by the Piracy Committee that you referred to? A. I don't believe I referred to our Piracy Committee as organized about the time that we started employing shoppers.

Q. Well, was the meaning, then, of your term "adjudged to be copies"—well, adjudged by whom? What is the meaning of that term? A. By Piracy Committees.

Q. And at that time, January, 1935, how were the Piracy Committees made up? A. Well, at that time we were beginning to use retail Piracy Committees. A definite policy had not as yet been formulated, but we started in shortly after I came to the Guild in securing almost exclusively retail committees. 621

Q. Then what was the procedure that the Piracy Committee—did the Piracy Committee report to Mr. Goldstein or the Board of Governors or to you or to whom, that a certain dress was adjudged a copy? A. Well, they would report—write and sign a report of their judgment. That

was before it became part of our records. I don't know whether I can say that they reported to anybody particularly. They simply recorded their judgment.

Q. Well, how did that report to the shopper? A. Oh, after their judgment had been arrived at, if the garment was adjudged to be a copy, then the sketches of the dress, with the same information which we had previously sent out to retailers, was then sent to shoppers in cities where we had shoppers.

623

Q. Where complaints were made locally by retailers to the shoppers, what were the shopper's instructions? A. Well, the first thing we were to do was the check of the records of these sketches, to see whether the particular garment complained of had been adjudged a copy by the Piracy Committee in New York, the controlling committee, or Central Piracy Committee. If that were not so, they were to wire the Guild and find out if such a decision had—such address had been considered, or was being considered. If there was a need or a desire or—strike that out, that part of it for a moment. Let me correct myself. Assuming that there was no decision on a particular dress, we would frequently take a complaint and get the dresses for the committee the next day. On some few occasions locally they would desire to hold the meeting in the city where the complaint originated. They were empowered to co-operate with the local retailers to that extent. Any such decision of a local committee like that had no bearing except for its particular city in which the complaint would originate.

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Q. What was the nature of the report that they made, as to details of the dress? Did they have to submit a sample of the dress, or number of the dress, or anything of that kind?

Mr. Weisman: Who is "they"?

Mr. Haycraft: The shopper.

A. The shoppers did not originate any complaint.

By Mr. Haycraft.

Q. I did not ask you that.

Mr. Haycraft: Read the question.

(The reporter repeated the last question as above recorded.)

A. Well, I am sorry. I cannot answer that question.

By Mr. Haycraft.

Q: You cannot? A. It is not sufficiently specific. I do not know who you are referring to. Read the question.

(The reporter again repeated the question.)

The Witness: I don't know what complaint you are referring to, or what decision you are referring to.

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By Mr. Haycraft.

Q: Well, you have testified that your shoppers were expected to take complaints—local complaints. A. Yes.

Q. You just now got through saying that these shoppers submitted these complaints to your office in New York. A. Yes.

Q. My question is, What information did they submit? A. All right, I have been saying that. They would submit a question: "Is Model No. 1000 from John Jones a copy of Tom Smith's 500?"

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Q. Were they ever instructed to get samples of the dresses and send them to the New York City office? A. Yes; where we could not get the sample ourselves.

Q. What was the custom as to your activities—that is, your office—as to getting the sample that had been complained about? A. Why, I am assuming that you are talking about a thing that has not already been adjudged a copy?

Q. Right. A. We get this request, just as I said before, "Is so and so a copy?"

Q. Right. A. The next step, assuming that the manufacturer is a New York manufacturer, the question of alleged copy, if he is a New York manufacturer, we send someone up to see the dress and to see the original, and to see whether in their judgment there is a possibility that that is a fair complaint. If we believe that it is, we say to the alleged copyist manufacturer—we ask if he will not submit his sample the following day to a Piracy Committee. We invite him to come up, state all the facts in defense of his dress to indicate that it is not a copy, if that is his position. We do the same thing with the original dress, and then both those garments are submitted to the Piracy Committee the next day, along with the interested manufacturers, who bring any testimony or evidence or sketches or anything else that they have to prove their point of origination if they claim it, and date of acceptance of their line, the production on their line, et cetera.

Q. Now, in the personnel of these Piracy Committees, in January, 1935, how were they selected? A. Since January, 1935?

Q. Yes. A. Well, the process has been an evolution, so I cannot answer that.

Q. Well, begin at the beginning, and bring us down to the present time; evolve a little bit. A. All right. I told you that we started it around that time in informally securing retail committees, around the fall of 1935, we accepted a regular procedure that the Guild followed since then. We went to the various New York retailers, and secured from them and buying officers a list of personnel, and, from that, made up panels. We advised a week in advance a committee of from three to five retailers from this panel. We selected them—they were selected from these various panels, and they are invited to serve on a Piracy Committee a week later—say, Tuesday, or such and such a day.

By that method, by calling them a week in advance, there is no possibility of anybody being called for particular judgment.

In other words, the committee is selected, and we have not any idea what dresses are going to be submitted to them. Then, when they come with a complaint, they come in during the previous twenty-four hours, and they sit in judgment on that.

There is, however, this proviso: That a non-Guild manufacturer, not a member of the Guild—a non-Guild manufacturer coming up to the Guild to appear before this committee and defend his garment may, without cause, take exception to the committee. As a matter of fact, the procedure is that if he takes exception to the committee, the next committee, which is coming the following day, he is told who that is, and if that is not satisfactory, he again may object with or without cause. If that is not satisfactory, we ask him to select from our panel retailers, any committee—well, I think we select one, and those two select one, or a third; anyway, it is a Special Piracy Committee for him.

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He has, however, the right of appeal, which our members have not got. In other words, if the decision is against him, and they say that his garment is a copy, and he doesn't think it is, he has a right to ask for an appeal, and the Appeal Board, as the system routine is now established, and as the procedure is now established, is made up of a group of merchandise managers from the various stores and heads of offices.

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Q. When did that last go into effect? A. About the same time as the other.

Q. When was that? A. Well, in the early fall of 1935.

Q. Do you have any copies of resolutions covering that?

A. Yes, I believe so. I know we have.

Q. I would like to have those produced. A. Those are the executive Piracy Committee that you were referring to before. There are minutes on it.

Q. You don't know where the minutes that I had there—you do not know if that covered it? I do not think that it did. A. What is that?

Q. I don't think that the minute that I had identified covered that particular point. A. No, I would not say that.

Q. What is that? A. The minute that approved this routine were the minutes of the executive Piracy Committee, which you were referring to before.

Q. I see. A. In the constitution.

Q. What I would like to have is any written rules or regulations.

Mr. Weisman: We will have them. We will get them for you. We have them.

Mr. Haycraft: All right.

Mr. Weisman: They were in evidence in the Filene suit. I can show them to you.

Mr. Haycraft: This is not the Filene case, and has nothing to do with the Filene case, and it is not going to be of any assistance to refer to it.

Mr. Weisman: I tried to help you, to tell you what I could do. If you do not like it—

Mr. Haycraft: There has been a steady attempt to refer to the Filene case at every opportunity you can get, and I don't think that it should be done. This record is built up on its own basis, and not on the Filene case.

Mr. Weisman: That is for the Court to say. There is no jury here. The reason I refer to the Filene suit is because I didn't want to say it before, but my adversary seems to express the greatest amazement over such resolutions, and I say that they were in the Filene suit, and I say so advisedly, because copies of the minutes in the Filene suit were furnished to Mr. Haycraft, so there is no ground for any amazement that there was such.

Mr. Haycraft: There is no amazement. All this is manufactured for the benefit of the Examiner.

Mr. Weisman: Oh, no.

Mr. Haycraft: There is no amazement whatsoever. This is not relevant.

Mr. Weisman: I have too great a respect for the Examiner to manufacture anything for his benefit. He can take care of himself, I am sure.

Mr. Haycraft: There is a lot of talk; if the respondent wants to pay as high a price as he can for this record, that is his privilege. We are certainly losing a lot of time. You haven't any copies at this time.

Mr. Weisman: We will get them.

Mr. Haycraft. Some later time will be quite all right.

Mr. Weisman: All right.

638

By Mr. Haycraft.

Q. Now, in making up this panel was it restricted to retail dealers who were known to be co-operating with the Guild in its style piracy program? A. Well, obviously.

Q. Your answer is yes, then? A. Well, it is still obviously.

Q. Well, yes? A. Well, I think that would be obvious, yes.

Q. I am asking you if your answer is yes. A. Yes.

Q. Now, if the final result of all these committees is against the manufacturer that is not a member of the Guild, what then? A. What is that?

Q. What happens next, if all the committees that pass upon a certain claim, decide against the manufacturer that is outside the Guild? Then what happens?

639

Mr. Weisman: Just a moment. I do not understand that question; and I cannot see how the wit-

ness can understand it. What do you mean, "what happens?" To whom? I mean, the question is not at all intelligible to me, and I submit that the witness should not be permitted to answer such a question. Do you mean what happens to the dress, or what? I don't know.

Mr. Haycraft: What happens to the manufacturer?

The Witness: Well, Mr. Examiner, frankly, I find it very difficult to answer those questions, as they are not specific. This suit is something of great importance to us, and I do not wish my answers to be anything but direct answers to questions that I understand in my testimony. I think I have normal intelligence, but I really do not understand your question.

Mr. Haycraft: You can strike out that statement as not in response to any question, and that the witness be instructed to confine his remarks to answers to questions.

Mr. Weisman: I think the witness can address the Court for aid under such circumstances. It is proper matter for the record.

Examiner Bennett: Well, I will let it remain in the record. I think that I will ask you, however, to make your questions more specific as to what happened. I suppose what you want to develop is whether there was any further action by the organization. Is that it?

Mr. Haycraft: Exactly.

Mr. Weisman: Your Honor made a good guess, but we could not.

The Witness: Well, I have always testified that where a garment has been adjudged to be a copy and that is what I assume you mean when you say that the committee decides against the non-Guild manufacturer?

Q. Yes. A. That the sketches which we used to send out to the stores before we had shoppers, are, now sent out to the shoppers; and I have already testified also, I think, that it is their job to locate those garments, and call it to the attention of the participating retailer.

Q. And if the participating retailer will not return these garments, indicates to your shopper that he will not co-operate by returning the garment to the manufacturer?

A. They report back to us.

Q. They report back to you? A. Yes.

Q. All right, then. What is the next step by you as to that particular retailer? A. Well, the next step by us is to get in touch with that retailer and their New York office, cite the circumstances of the report that we have as we know it, try to verify the facts, try to find out where, or whether that transaction is—whether it is of and by itself an isolated case of misunderstanding, or whether it indicates or is intended as a determination of policy on the part of the store, reversing their policy as they had previously declared it to be to us.

644

Q. Then what do you do in respect to that dealer? A. Well, there are two questions there. The first is on the assumption that we find out that the failure to remove the copies from sale was due to some misunderstanding, or something of that character, and we would do nothing. If we find out that it is an indication or intended as a change in policy, we notify our members that this store is no longer co-operating.

645

Q. How do you make that notification? A. By exchanging in the card file for the white, green, or yellow card, a red card.

Q. Then do you send a red card to the manufacturer? A. Each member of our organization.

Q. Each member of the organization? A. That is correct.

Q. And why do you do that? A. To notify them that this retailer is no longer protecting the goods of the Fashion Guild Manufacturers, themselves included, from piracy; to notify them that, under the rules of membership, this retailer, as he is no longer co-operating, should not be sold.

Q. Now, with respect to the use of the red card, is that the only occasion—the only time that your office sends a red card to the membership? That is, in such a situation as you just related? A. You mean we only send red cards in cases of style piracy?

Q. That is right. A. No.

Q. When are the other occasions that you send red cards of retail dealers to the membership of the Guild? A. When a retailer—when a manufacturer, a member of the Guild, has, through experience, been forced to break the rules of membership for the manufacturers, by having imposed upon him certain things that may be in violation of our code of ethics, or code of fair practice, and the retailer indicates that it is their intention to pursue the same tactics with all manufacturers—or, rather, with all of our members. In order to prevent our members from all being exposed to the breaking of these rules, we notify the members in the same manner.

Q. What are those rules and regulations as of April 16th, 1935? A. Well, I cannot say.

Q. You have that? A. Yes, we have.

Q. You have a set of them with you to-day? A. Yes, I believe we have.

Mr. Weisman: Mr. Haycraft, you asked us for those before to-day?

Mr. Haycraft: I think so. But I am not sure about it.

Mr. Weisman: Evidently Mr. Feldman said you had it; so instead of wasting time we will make a notation of that and we will bring it in to-morrow.

Mr. Haycraft: All right.

Mr. Weisman: Unless we have got it there, I don't think we have got it. Mr. Goldby thinks so, but he is mistaken.

The Witness: You wanted the sum total of all of them, did you not?

Mr. Haycraft: Yes.

The Witness: It would not be in the minutes?

Mr. Haycraft: It would be cumulative.

(Discussion off the record.)

By Mr. Haycraft.

Q. Now, did you make any attempt to check up, to see whether or not the manufacturer carries out his part of the agreement with the Guild, as to selling or not selling to a retail dealer that is not co-operating? A. Yes, sir. 650

Q. What steps are taken in that respect by you or by your office? A. Well, we employ auditors; they go around constantly auditing the books of the members of the Guild, to see whether they are living up to the rules of the Guild and the results of their membership.

Q. And if it is found that they are not, is there any penalty for that violation? A. Well, I guess you are one step ahead of your question. It is then submitted to a Grievance Committee, which determines whether or not there shall be a penalty.

Q. I see. If the auditor reports that there have been instances where they have not lived up to their agreement, then that is reported to a Grievance Committee? A. Yes. 651

Q. And the member is given a hearing before that committee? A. Correct.

Q. And if the committee decided against him, finds that he has been violating his agreement, what is his penalty? A. Well, there is a discretionary—it is discretionary with the Grievance Committee. Conceivably, they could find

that he did violate and there would be no penalty. I mean the circumstances and intents and all those things are bound in with it.

Q. What is the penalty that may be levied by the Guild under its own rules and regulations against an offending member? A. My recollection, if that will suffice for the time being, is that, for wilful violation—if you are speaking of the rate card system, for wilful violation of that, the first offense for that is \$100 fine. The second offense—again from recollection—is \$200 or \$250 fine.

Q. The third offense? A. Maybe \$500. I am not sure.

Q. What is the maximum? A. Well, I suppose the maximum would be expulsion.

653 Q. Well, is there a maximum dollar fine—money fine? A. I really do not know.

Q. \$5,000? A. No.

Q. One time it was? A. There was at one time.

Q. At what time was that \$5,000 fine removed? A. I do not know.

Mr. Weisman: I object to the form of that question. As a matter of fact, the resolution—it wasn't removed, the resolution by which it was enacted was self-removing. It was one of these self-effacing things, and my friend has a copy of that resolution, and he can fairly offer it in evidence; so that the Examiner may see that it was not put on with any removal idea.

Mr. Haycraft: Will you produce a copy of that resolution?

The Witness: To-morrow, yes.

Mr. Haycraft: I think it is already identified.

Mr. Weisman: You brought it here. We gave you a copy of it. It is marked for identification.

By Mr. Haycraft.

Q. Well, let me ask you this question: Has that \$5,000 fine ever been revived? A. Revived?

Q. Yes. A. As—

Q. Yes; as a maximum penalty. A. No. As a matter of fact, I am not clear as to whether it was ever passed.

Q. Was it the highest—well, what was the highest fine that has actually ever been imposed in your recollection?

A. For piracy?

Q. Yes; the highest fine for selling to a red-carded dealer. A. I believe \$100.

Q. Do you have any record of the number of such fines? I mean the number that have actually been levied—the number of instances where members have violated their agreement not to sell to red-carded dealers? A. Well, our books would show income for fines as a separate item, and checking that back against the Grievance Committee, we can tell. 656

Q. Have you made any summary of your Grievance Committee reports, as to the number of those? A. No.

Q. Is that Grievance Committee—does it sit all the time? A. No.

Q. Sit as called by you? A. Well, as a matter of fact, the procedure is when we accumulate enough to give them a few hours' work, why, we call a committee.

Q. Is there any notification? A. Providing it does not interfere with their operation. 657

Q. Well, now—strike that out. Have there ever been instances where members have been expelled because they did not live up to their agreement not to sell to red-carded dealers? A. I believe not. There is one questionable case in my mind, but I don't think they have been expelled. I think they have been suspended.

Q. Do you recall that case? A. Sure.

Q. What case was it? A. It is a man—a firm named Rosenthal & Kalman.

Q. For how long were they suspended? A. Well, they are still suspended.

Q. Still suspended? A. I believe so. I am not quite clear on that.

Q. If you solicit a dealer to co-operate in your style piracy program, and he refuses to do it, is he red carded?

A. Well, not just as bluntly as that. The retailer, if he refuses to co-operate, as you say, we make an attempt to explain our program, if we find, after presenting our entire story, and satisfying ourselves that we have presented our entire story, then the retailer says, "Well, I am not interested in that—I am going to carry copies of your goods"—yes, then he is red carded.

659

Q. Then, I believe, it is correct that you do follow on the practice of red carding all retail establishments that are conducted in apartment houses? A. Well, that is one of the fair trade code of ethics that I referred to before. We have a rule against selling—

Q. He is red carded to your members, and green carded to Protective Affiliates? A. I believe that is correct. I am not certain of that detail.

Q. Now, there have been times—strike that out. The custom to notify retail dealers of the names of manufacturers who have resigned from or who are not members of the Guild— A. It is not the custom. It has been done.

Q. Do you know how many times? A. No, I do not. May I add—

660

Q. Do you remember when it was done?

Mr. Weisman: He has not finished his answer.

The Witness: May I add, when you asked the question, I assumed that you were speaking of retail guilds under which we have an agreement to do that; but I don't want the question to mean that we notified all participating retailers. We never did that.

By Mr. Haycraft.

Q. You never did that? A. No.

Q. The Guild with whom you have an agreement to give them that information? A. An agreement to keep them advised of our membership, both additions and subtractions.

Q. What was the purpose of doing that? A. Well, the purpose is, as far as our own members go, that our members' merchandise is protected against piracy. Now, it is of some interest to retailers who, I should say—or apparently they think—or want to buy originations or want to sell them—keep them protected against piracy, to know from whom they may be bought and the reverse is when somebody once was a member of the Guild, and is no longer a member of the Guild, we have had complaints registered with us concerning manufacturers who may have resigned, wanted to know why somebody had a copy of their dress.

662

Q. Your letterheads carry a list of your members? A. On the reverse side.

Q. On the reverse side? A. Yes.

Q. And how often are those letterheads corrected as to your members? A. Well, as often as it is practicable to do so.

Q. Well, just give us an idea. When were they last corrected? A. May I refer to Mr. Goldby, because he knows more about that?

Q. Surely. A. Mr. Goldby thinks about every two months we run out of stationery; so that then the list is corrected.

663

Q. Well, then, how do you apprise the members, outside of the members of the retail guilds, of those changes? A. Why, we do not; except for public announcements that may be carried in "Women's Wear" and things of that kind.

Q. I will ask you if you can identify this paper (a document was passed to the witness): A. What?

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Albert M. Post—For Commission—Direct.

Q. Can you identify that? A. I have a recollection of having seen it.

Q. You say you do? A. Yes.

Q. To whom was that sent? A. This, I believe, was sent to retail Guilds.

Q. This Chicago and Minneapolis one? A. Yes.

Q. Baltimore? A. Well, I would not say as to that. I imagine they were sent out generally to those retail guilds. Is that one-page thing?

Mr. Haycraft: I offer this as Exhibit No. 88.

Examiner Bennett: You are offering that?

Mr. Haycraft: Yes, I am offering that.

665

Mr. Weisman: No objection.

Examiner Bennett: That will be received and marked Commission's Exhibit 88.

(The paper referred to was received in evidence and marked Commission's Exhibit 88.)

By Mr. Haycraft.

Q. Can you produce at this time or have you with you a list of retail dealers that have been red carded, who were red carded as of April 16, 1936? A. Well, if it is one of the lists you asked for?

Q. Yes. A. I have, and can produce it.

Q. I asked for a number of lists. Do you have them all?

666 A. I think so, yes.

Q. All of them—will you produce them?

Mr. Weisman: Will you read the last question?

(The reporter repeated the last question as above recorded.)

Mr. Weisman: Will you withdraw that question and ask him for the list as of July 6th? You asked us to get up a list in advance.

Mr. Haycraft: I asked for a number of lists, and they were gotten out periodically, I believe.

Albert M. Post—For Commission—Direct.

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Mr. Weisman: We have got a list as of July 6th.

Mr. Haycraft: I will take that in lieu of the one of April 16th.

Mr. Weisman: That is what I mean. We would have been glad to get it up for you.

Mr. Haycraft: I will take the last one you got up before that time; what was the last one you got out before July?

Mr. Weisman: They do not send them out monthly.

The Witness: No; because, due to all this litigation, those lists—

By Mr. Haycraft.

668

Q. When was the last one that you sent out to your members? A. Well, if you won't get annoyed with me if I refer to the Filene suit—but it seems to me that they have been referred to; some list around January or February of the year, which I believe was the last one.

Q. Give us that one. A. I will check back on the record.

Mr. Weisman: We will see if we have got it.

The Witness: I think that you have got that list, but if you have not I will get the list that was used in there.

Mr. Haycraft: I offer this one in evidence.

Mr. Weisman: Will you ask the witness a question to identify that; the last list you referred to was as of April 16th. 669

Mr. Haycraft: All right.

By Mr. Haycraft.

Q. Are you able to find a list as of April 16, 1936? A. No, we have no such list.

Q. What have you? A. We have a list of July 6th, 1936.

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Albert M. Post—For Commission—Direct.

Mr. Haycraft: I will accept that in lieu of the one of April 16th, 1936, with the request that you furnish the prior list that was submitted to your members; I think probably in January or February, 1936.

The Witness: Yes, we will.

Mr. Haycraft: I offer this one in evidence as identified.

Examiner Bennett: You may make this one as Commission's Exhibit No. 89.

(The paper referred to was marked Commission's Exhibit 89-A, B and C, and received in evidence.)

671

Mr. Haycraft: That consists of three pages.

Examiner Bennett: Very well. Now, gentlemen, before we adjourn for the day, I am going to ask you to co-operate with the reporter in checking up on the appearances. I am not sure that they are correct, and I would like to have them correct.

The hearing is now adjourned until 10.30 A. M. to-morrow morning.

(Whereupon, at 4.30 o'clock P. M., July 15, 1936, the hearing in the above-entitled matter was adjourned.)

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Albert M. Post—For Commission—Direct.

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Room 901, 45 Broadway,
New York City, N. Y., July 16, 1936.

Met, pursuant to adjournment, at 9.30 A. M.

Before: JOHN W. BENNETT, Examiner.

(SAME APPEARANCES.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may proceed.

Mr. Weisman: Mr. Haycraft has asked me for some papers. I want to see if we have them.

674

During various times yesterday certain additional papers were requested by Mr. Haycraft of the Commission. We have advised him that theretofore he had not requested the papers so we did not have them, but we naturally undertook to get them during the adjournment, and we have them here.

I believe that Mr. Haycraft requested a copy of the rules and regulations under which the Executive Piracy Committee now acts, and also a copy of a report. I have that here and I will give it to you, Mr. Haycraft, and I will leave a copy with Mr. Post so if he is questioned he may testify with regard thereto.

675

ALBERT M. POST was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Who compiled and prepared this Commission's Exhibit 96? A. Who what, sir?

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Albert M. Post—For Commission—Direct.

Q. Who compiled or prepared Commission's Exhibit 96, instructions? A. I do not recall that.

Q. Do you recall when they were first issued? A. (No response.)

Q. To refresh your recollection, was that about the first part of 1935 when you first began to employ shoppers? A. I imagine that is correct.

Q. Have you any better recollection than an imagination on it? A. Well, what I mean to say, I think that is correct, because when we hired the shoppers I am sure we must have sent out instructions, and this was it (indicating).

677

Q. What was the occasion of sending out these instructions? A. We had hired these shoppers.

Q. That you testified about yesterday? A. That is right.

Q. And these instructions were furnished to those shoppers? A. That is right.

Q. I notice in the last page originally drafted and part of the instructions, was a declaration of co-operation of anti-piracy; was that furnished to the shoppers along with the instructions? A. Yes, I believe so.

Q. What was the purpose of that? A. I cannot say as to that.

Q. Do you recall whether or not the shoppers were expected to familiarize the persons upon whom they called, and retail dealers, with the declaration of co-operation of anti-piracy—

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Mr. Weisman (interposing): I object to the form.

By Mr. Haycraft.

Q. —form that was being used by the Guild at that time in soliciting the co-operation of retail dealers?

Mr. Weisman: I object to the question as incompetent, and want to have the question read.

Albert M. Post—For Commission—Direct.

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Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Overruled. He may answer.

The Witness: I may answer?

Examiner Bennett: Yes.

A. Well, I don't believe that is correct, Mr. Haycraft.

By Mr. Haycraft.

Q. Were you executive director at that time? A. Yes.

Q. Is there any way that you can refresh your recollection as to the purpose of the inclusion of this copy or form of declaration? A. I have heard Mr. Weisman say it is not referred to in the declaration—in this instruction. I will be very happy to read that myself and see if there is any reference to them, unless you also agree with Mr. Weisman that is not so.

680

Q. I do not know whether that is or is not, but I am trying to get your independent recollection. A. I have no recollection of it. I can say it was possibly attached so that the shoppers would know what the declaration looked like, but I say your interpretation is wrong, because retailers already signed the declaration there is no particular point in having the shoppers go around with another one.

Q. I am trying to find out if the shopper was expected to make any use of it? A. I should say not.

Q. Were any shoppers instructed to solicit the co-operation of retail dealers located in the territory where they were operating? A. Not to my knowledge.

681

Q. Would, then, it be your judgment that the inclusion of this was simply to acquaint the shopper with the arrangement that existed at that time with the retailer dealer? A. My conclusion would be because there is so much reference to the declaration of co-operation that it was simply attached to the instructions so that they would know what it looked like.

682

Albert M. Post—For Commission—Direct.

Q. What do you mean, with reference to the declaration? A. This, I see on the first page, just glancing at it, the words—just glancing at the first page I see the words incorporated “declaration of co-operation” once right in the middle of the page, and on the second page, as I turn it over, I see it again, just by glancing, so that I—

Q. It is mentioned in the instruction “declaration of co-operation”? A. “Declaration of co-operation” is mentioned, yes.

Mr. Weisman: Do I understand you to offer these?

Mr. Haycraft: Yes.

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Mr. Weisman: I make no objection to the competency of these documents. I waive any right to request that formal foundation be laid. I do object to their introduction in evidence on the ground that they are immaterial, since they refer to a procedure which is no longer in existence, and which was not in existence at the time of the filing of the complaint in this case.

Your Honor may remember that the witness, who is the Commission's witness, testified that since December, 1935, I believe—is that not correct?

The Witness: Yes.

Mr. Weisman: A new system of—

The Witness: It was before.

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Mr. Weisman: —dealing with piracy complaints had been inaugurated. This is a system which was operated under the old plan, I believe?

The Witness: Yes.

Examiner Bennett: In cases of this kind the background of the situation is very frequently given in the way of history of the actions of the organization under inquiry. I think, without exception, that that is true in handling cases of this

sort, and the Examiner is going to follow this rule, so he overrules your objection, and receives the documents as Commission's Exhibits 97-A to N.

Mr. Weisman: If this document is being received for the purpose of showing the background, I have no objection.

Examiner Bennett: Yes.

Mr. Weisman: With the understanding that it does not show the present operation.

Examiner Bennett: Oh, I think—

Mr. Haycraft: The witness will so testify; I have not asked him.

Examiner Bennett: I understand that—that it just gives a history of what the former practice is.

Mr. Weisman: Yes, that is true.

Examiner Bennett: That is all, of course, that is the end of that.

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(The documents referred to, heretofore marked for Identification Commission's Exhibits 97-A, 97-B, 97-C, 97-D, 97-E, 97-F, 97-G, 97-H, 97-I, 97-J, 97-K, 97-L, 97-M, and 97-N, were received in evidence.)

By Mr. Haycraft.

Q. I will ask the witness to testify as to whether or not that Commission's Exhibit 97-A is an example of the way in which grievances of that kind indicated were handled at the time of the date of the exhibit.

687

Mr. Weisman: I object to the form of that question. The question is whether or not grievances of that kind clearly calling for an operation of this witness' mind. What kind this grievance is, or how close to one or the other it might be, he has got an example in here, and I submit that each question stands on its own bottom, and you cannot ask a witness if a thing like that happens what would you do.

Mr. Haycraft: Well, I will ask him whether that is the usual procedure in handling complaints on or about the time of the date of that exhibit. We do not bring in every complaint that was handled during that period of time. If that is typical of it, we want to know it. If it is not, we want evidence of what the procedure was.

Mr. Weisman: Are you ready to answer the question?

The Witness: That question cannot be answered. We have about five different transactions all mixed up in this bunch of papers, all different kinds of transactions.

Mr. Weisman: Speak up so the Examiner can hear you.

The Witness: All different kinds of transactions, between Guild members and non-Guild members, and all sorts of things mixed up in this batch. That is not one transaction at all. It could not be typical of anything.

Mr. Haycraft: All right, let us have the exhibit back.

(Mr. Weisman hands Commission's Exhibit 97 to counsel for Commission.)

By Mr. Haycraft.

Q. I call your attention, Mr. Post, to Commission's Exhibits 97-A to F (indicating), and ask you if that refers to one transaction? A. A to F. (Witness examines papers.) No, sir.

Mr. Weisman: The answer was "No, sir."

By Mr. Haycraft.

Q. I will ask you whether or not Commission's Exhibits 97-A, B and C, 97-A being a letter from Mr. Goldby

Albert M. Post—For Commission—Direct.

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to Charles Lang, dated June 18, 1935, B being a letter from Mr. Golby to Miss Ann Sadowsky, dated June 18, 1935; C being a letter from Mr. Golby to Louis J. Brenner, dated June 18, 1935, all relate to appointment of these individuals as members of the Grievance Committee? A. Is that the question?

Q. That is the question. A. If I understood correctly, do these three letters pertain to an appointment of the Grievance Committee?

Q. Yes. A. That is correct.

Q. Were those three letters typical of the method employed in the appointment of the Grievance Committee in June, 1935? A. Grievance Committees, yes.

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Q. All right. I will ask you whether or not Commission's Exhibit 97-D, which is a letter from Mr. Golby to Mr. Ben Rifkin, of Daytime Frocks, Inc., dated October 18, 1935, is a notification to Mr. Rifkin that a Grievance Committee had been appointed to deal with his violation in selling copies?

Mr. Weisman: Will you read the question?

(Last question read.)

Mr. Weisman: Just a moment. I object to that question. Here is a document in evidence which is obviously what it is. It is written in the English language. It needs no interpretation. It is plain. Now, my friend, having offered this in evidence, says, "Is this such and such thing?" It is perfectly apparent on its face what it is. What is the sense of putting anything in evidence, if a minute after it is in evidence you are going to ask, "Is this an order?" "Are these minutes?" This is offered in evidence; it speaks for itself.

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Mr. Haycraft: I am trying to find out whether it is a typical method used.

Mr. Weisman: You did not say that.

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Albert M. Post—For Commission—Direct.

Mr. Haycraft: I will when I get around to it.

Mr. Weisman: I object to the question now propounded to the witness; otherwise, these proceedings will be interminably dragged out.

Mr. Haycraft: Who is dragging them out?

Mr. Weisman: You are, by asking questions that are incompetent. You know you cannot ask about a letter that is in evidence, "Is this such and such?" It is what it says it is. Of course, it is a notice, perfectly apparent on its face. Sometimes when we have a jury you may try to get that in to emphasize the evidence, but you do not do it before a court without a jury.

695

Examiner Bennett: Read the question.

(Last question read.)

Mr. Weisman: Here is the letter.

Examiner Bennett: The objection is sustained.

By Mr. Haycraft.

Q: I will ask you whether or not it was customary for the Fashion Originators' Guild to give notice in the form set forth in Commission's Exhibit 97-D to manufacturers who were charged with violating the rules of the Guild by selling copies? A. To Guild manufacturers? Members of the Guild.

Q. Members of the Guild. A. That is right.

696

Q. Do you say that Commission's Exhibit 97-E was also a form used at that time in October, 1935?

Mr. Weisman: I do not think the Court can hear you. I can hardly hear him. Can you hear the question, your Honor? I can hardly hear him standing beside him.

The Witness: Repeat the question, please.

(Last question read.)

A. It is a typical letter; it was not a form.

y Mr. Haycraft.

Q. What is Commission's Exhibit 97-F?

Mr. Weisman: Wait just a moment. I object to the form of that, as Commission's Exhibit 97-F is now in evidence, was offered by my friend. Now, he says to the witness after he has offered it in evidence, "What is it?" It speaks for itself, otherwise it should not be offered in evidence.

Mr. Haycraft: I wish to call your attention, Mr. Examiner, to the objection that was made by this respondent to this exhibit in connection with the testimony of the witness before I began to take these pages up one by one, that they were a mixture, that they did not relate to anything, that he could not tell what they were, and all that. I am doing that to clarify the record so that you and the Commission will understand what these various documents are.

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Mr. Weisman: That is no way to do it.

Mr. Haycraft: I agree with counsel that I think the document as originally offered does speak for itself, but in view of the witness' testimony I think it is necessary to clarify the record.

Mr. Weisman: Each document speaks for itself and the Commission can clearly see when it reads it, as well as the witness, and you should have seen that these are four separate items.

699

Examiner Bennett: Read the question, please.

(Last question read.)

Examiner Bennett: I will ask you to make that question more specific. I think the form of your question dealing with the last document is all right, and I think that is what we are interested in, and nothing else much. That is, as to whether or not these documents reflect the practice at that time.

700

Albert M. Post—For Commission—Direct.

Mr. Haycraft: Well, I want to know, first, what the document is. It does not indicate on the face of it what it is, specifically.

Examiner Bennett: Well—

Mr. Weisman: Now, I move that it be stricken out, if it is an unintelligible document, I move it be stricken out of evidence.

Mr. Haycraft: I am asking the witness now to further identify the exhibit so that the Commissioners and the Examiner know what this paper is.

Mr. Weisman: Just a moment. I respectfully submit that the paper on its face—

701

Examiner Bennett: Just a moment; that is a matter that we are trying to determine, and I will not entertain any objection in that respect. Let us see the document. The document seems to indicate that it was one of the letters written. Oh, I see it is not addressed to anybody.

All right, the objection is overruled; you may answer.

(Last question read.)

A. Well, I will have to guess.

Examiner Bennett: It is not necessary to guess, if you are familiar with the work of the organization.

702

The Witness: Well, I am sorry, sir. I still have to guess. It may be a copy of a report of a committee, but I have not the original, and I don't know that it is.

Examiner Bennett: Yes. Well—

By Mr. Haycraft.

Q. What is your judgment that it is, as director of that Guild.

Examiner Bennett: You are here to give your best recollection, you are not here to say things that are going to damn you eternally or otherwise.

The Witness: I did not want to identify something that I had no reason for knowing was exactly what I identified it as.

Examiner Bennett: I see.

The Witness: It appears to be a copy of a grievance committee.

Mr. Weisman: You mean a grievance committee report, I take it.

The Witness: Findings is what I meant to say.

Mr. Weisman: Findings, not of the committee?

The Witness: It appears to be the findings of a grievance committee.

By Mr. Haycraft.

Q. It appears to be the findings of the grievance committee? A. Yes.

Q. Does that relate to any transaction referred to in any of the other exhibits here? A. I don't think so.

Q. Does it relate to the Daytime Frocks? A. Yes.

Q. Who manufactures Daytime Frocks? A. Daytime Frocks?

Q. Yes. A. That is the name of a concern.

Q. Daytime Frocks is the name of a concern? A. Oh, yes.

Q. What dress was involved in Exhibit 97-E? A. Wait 705
minute. I think this report does relate to the items in the first three letters.

Q. Exhibit 97-E? A. Yes, sir. That is correct, and the one in front of it.

Q. Exhibit 97-D? A. Yes.

Q. You mean Mr. Ben Rifkin of Daytime Frocks, Inc.? A. Yes.

Q. And Mr. Louis J. Brenner? A. Yes.

Q. That does refresh your recollection with regard to Exhibits 97-D and 97-E? A. To Mr. Rifkin and to Mr. Westheim—

Q. Did Mr. Rifkin and Mr. Westheim sit as a committee? A. No. The committee has decided that Daytime Frocks' sale of No. 394 is a copy of David Westheim. He was the complainant.

Q. He was the complainant? A. Yes, I suppose you might put it that way.

707 Q. Westheim was the complainant and Daytime Frocks was the respondent? A. The complainant might actually have been some retailer who complained that they had the dress and somebody else had a copy of it, but he was the manufacturer that had the original.

Q. Westheim? A. Yes, sir.

Q. And Rifkin was the one who was supposed to have violated it? A. Rifkin was—what was that number?

Q. The members of the committee appear on that report 97-F as Mr. Friedman, Mr. Schneider and Mr. Beilinson. A. Yes.

Q. Mr. Friedman, Mr. Schneider and Mr. Beilinson are the members of the committee? A. Yes.

Q. So the report of the Grievance Committee indicated in Commission's Exhibit 97-F referred to the transaction, or to the claim mentioned in Commission's Exhibit 97-D and Commission's Exhibit 97-E? A. Yes.

708 Q. Do you know what Commission's Exhibit 97-G refers to, this says something about "Spoke to Mr. Myerson of Aywon"? A. That apparently is the report of a young man who makes preliminary investigations on complaints as they come in.

Q. He goes around and makes a call on the manufacturers? A. On the members.

Q. On the members that are involved? A. In the complaint.

Q. What would you say that that young man had done, and, first, who is he? A. The man who does that is named Gartner.

Q. As indicated, he talked to Mr. Myerson of the Aywon Company? A. Yes, sir.

Q. As to his refusal to give information on the P. & R. Shop of Brooklyn, New York? A. Yes, sir.

Q. The P. & R. Shop was the one that was supposed to be the defendant? A. No, I do not think so.

Q. What would the P. & R. Shop be? A. Judging from what I see here apparently somebody said they had Guild merchandise; that is pure conjecture.

Mr. Weisman: I object to pure conjecture; I like the purity, but I do not like the conjecture. 710

Examiner Bennett: All right.

By Examiner Bennett.

Q. You are giving us your best recollection on that? A. I have no recollection on it.

Examiner Bennett: What are you trying to find out here?

Mr. Haycraft: I am trying to get him to interpret the record correctly.

By Examiner Bennett.

Q. Do you recall the circumstances that brought it out? A. I am afraid I do not in this case. 711

By Mr. Haycraft.

Q. Who is Mr. Rimland? A. I have no idea.

Q. Was he connected with the P. & R. Shop? A. He might have been.

Mr. Weisman: I ask that the answer be stricken out as a conclusion of the witness.

712

Albert M. Post—Fox Commission—Direct.

Examiner Bennett: What is the situation, then, Mr. Haycraft?

Mr. Haycraft: I will ask a question which will take care of that.

By Mr. Haycraft.

Q. Does this report indicate that he was?

Mr. Weisman: I object to that. If the report will help the witness to refresh his recollection that is one thing, but if he is simply reading what is on the exhibit, why, then, the exhibit speaks for itself.

713

The Witness: The report does indicate it down here.

Mr. Weisman: Then, the report speaks for itself.

Examiner Bennett: Proceed.

Mr. Haycraft: Mr. Examiner, I think I can clear this up in a few minutes.

By Mr. Haycraft.

Q. Was it customary, in the work of your Mr. Gartner, to make reports of this nature upon making the investigation that you had referred to a moment ago; that is, when he made calls on members of the Guild? A. Mr. Haycraft, let me say this—just a moment, let me see if I can tell you what I believe this has reference to—that is what you are trying to get at?

714

Q. Yes. A. A retail store does not co-operate, or, to put it this way, a retail store that is not co-operating with the Fashion Guild on piracy and some other store—that is, let us say that we find that the P. & R. Shop has Guild merchandise and we know that they are not co-operating and are carrying goods that are not the goods of our members, and so forth. So they say to us, our report, Daytime or Aywon—we saw some Aywon dresses in their window—that comes in to us and then we informally check first

with our member as to whether or not they had shipped any goods to Aywon. That is what I believe this thing is.

Q. That is the report of your investigator? A. That is when he calls on them. He does investigate.

Q. All right. This exhibit, Commission's Exhibit No. 97-H, refers to the same transaction as Commission's Exhibit 97-G? A. Yes. I think so. At least, it refers to the same retail shop.

Q. How would you describe Commission's Exhibit 97-H? A. That, again, is a report of Gartner who checked various members of the Guild on that same retail shop.

Q. Who is Garland? A. Garland? He was a member of the Guild.

Q. He is the one that made the complaint? A. Apparently.

Q. The names mentioned at the top, namely, L. & D. Beilinson, C. H. D. Robbins, Aywon, M. & S. Extract, B. Tobias, are they members of your Guild? A. They were at that time. Some of them still are.

Q. Who is Mr. Bert Reinitz, referred to on Commission's Exhibit No. 97-I? A. He is publicity director of the Fashion Guild.

Q. Did you have anything to do with the writing of this letter, Commission's Exhibit 97-I? A. No. However, I know the letter.

Q. You recognize the letter? A. Surely.

Q. Were members of the Dress Creators' League members of the Guild at the time this letter was written? A. Yes.

Q. Do you know the purposes of the writing of this letter? A. May I expand one answer that I gave you a moment ago about who Mr. Reinitz is?

Q. Yes. A. He is also—I did not know what his title is, but he is associated with the Dress Creators' League. I think he passes on their publicity also. Now, what is the question you want to ask now?

Q. Do you know the purposes of the writing of this letter? A. P. & R. Shop has Guild merchandise.—

Q. I do not believe you understood the question. What was the purpose of this letter? A. Oh, I see what you mean. Apparently, it was to acquaint Mr. Reinitz with the fact that our auditors checked some of the —

Mr. Weisman (interposing): It is obvious that the witness is now reading from a letter, and it shows on the face of it what it is. That is the vice of all these questions. I object.

Examiner Bennett: Yes.

Mr. Weisman: The letter that he has in his hands is objectionable. The letter is in evidence now. He is asking the witness as to what the purpose of the letter is, and the witness cannot state that because the purpose of the letter can best be determined from what it is on its face. It shows what its purpose is.

Mr. Haycraft: The letter does not show the purpose of the letter.

Mr. Weisman: I will leave it to the Court (handing the document to the Examiner).

Examiner Bennett: If the purpose of that letter is to be inquired into that is one thing. On the other hand, if the purpose of your investigation is to see what the circumstances were under which it was written, I think that if he could get any information on that, it is proper for him to do so.

Mr. Haycraft: If the witness does not know, then I will call Mr. Goldston and find out from him. Oh, I believe this one was written by Mr. J. M. Golby, executive secretary. I will call him if this witness does not know.

Mr. Weisman: That would not make it any more competent. The letter says just what it is and what it is about.

Mr. Haycraft: It does not say what the purpose of it was.

Mr. Weisman: Yes, it does. The Examiner will see from a reading of the letter that the purpose of the letter is perfectly apparent.

Examiner Bennett: I sustain the objection to the question in that form. If you want to get the circumstances under which it was written you may do so.

By Mr. Haycraft.

Q. What did Mr. Reinitz have to do with the calling of the meetings of the Grievance Committee? A. I have said that Mr. Reinitz was employed by the Dress Creators' League, which was a division in the Fashion Originators Guild. He has more or less acted as secretary—executive head of that organization in so far as our contact with it goes, so any transaction involving a member of the Dress Creators' League is usually handled through Mr. Reinitz, or copies of the correspondence is sent to Mr. Reinitz. I think it is obvious that the Dress Creators' League was involved in this particular situation and that is why he was notified.

Q. Was it customary for members of the Dress Creators' League, Division of the Guild, and the Protective Affiliates, to sit on the Grievance Committee? A. It was customary to sit on the grievance committees involving their own membership—in other words, it was customary for one of their members to sit in on grievance committees involving their own membership.

Q. But not the other members? A. No.

Q. Referring to Commission's Exhibit No. 97-K, which is the report from the Chicago shopper, who was the person signing; in other words, whom do the initials "C. G." refer to? A. That is not, in the first place, a report from the Chicago shopper. That is the report of Mr. Gartner rendered which refers to a report of the Chicago shopper.

724

Albert M. Post—For Commission—Direct.

Q. Does this represent a report of his investigation?

A. It reports his investigation of the report from the Chicago shopper, if I make myself clear.

Q. You do. The investigation was made in New York?

A. Yes.

Q. That is the same type of report as Commission's Exhibit No. 97-H; would you say? A. Generally, yes, because it involves, of course, different people, but it is the same type of report.

Q. Would you say it is indicative of the practice that was being followed at that time? A. Yes.

725

Q. Referring to Commission's Exhibit No. 97-L, which appears to be a letter from Miss Helen Kindler, or Mrs. H. Kindler, Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, Illinois, dated December 23, 1935, and addressed to Mr. J. Goldston, do you recognize that? A. I understand that.

Q. Who was the Chicago shopper; was Mrs. H. Kindler the Chicago shopper? A. Yes, sir; that is one of the Chicago shoppers. There are more than one.

Q. Was this report that she made here, Commission's Exhibit No. 97-L, the subject matter of the report in Commission's Exhibit No. 97-K? A. I do not think so, Mr. Haycraft. While it is, in part, apparently, again it deals with several transactions and one part of it refers to the same transaction involved—that is right. Yes; that is right.

726

Q. What would you say about Commission's Exhibit No. 97-M, which is a letter from Mr. J. M. Golby, executive secretary, to Mr. H. D. Friedman, International Dress Co., Inc., 1400 Broadway, New York, New York, under date of December 27, 1935; is that the same thing? A. That is one of the transactions in Commission's Exhibit No. 97-L and the transaction in Commission's Exhibit No. 97-K.

Albert M. Post—For Commission—Direct.

727

Q. Referring to Commission's Exhibit No. 97-N, being a letter from International Dress Co., Inc., H. L. Friedman, of the Fashion Originators Guild of America, Inc., New York, New York, attention of Mr. Golby, under date of December 26, 1935; does that relate to the same transaction as Commission's Exhibit No. 97-M? A. Yes.

Q. Would you say that the reports that I have called your attention to, and the correspondence relating thereto on Commission's Exhibits No. 97-K, 97-L and 97-N, were typical of the practice that was used at that time with the reports and data in handling complaints? A. Yes, sir; I think that is so. Mr. Haycraft, you said in handling complaints?

728

Q. Yes. A. Handling complaints of that kind?

Q. Of that kind. A. Yes.

Q. I show you Commission's Exhibits 98-A to M; both inclusive, for identification, and ask you if you can identify them in any way; that is, this sheaf of papers. For your information I will say that it was furnished by your office to our investigator. A. Yes, sir; I believe it was—yes, it is a group of papers showing a transaction clear through the Guild office.

Q. Would you say that that was in November, 1935? A. That?

Q. That in November, 1935, this was the typical method of handling transactions of that kind? A. Typical, not all details, but I think typically a fair example.

729

Mr. Haycraft: I offer this in evidence.

(The documents referred to, heretofore marked for Identification Commission's Exhibits 98-A, 98-B, 98-C, 98-D, 98-E, 98-F, 98-G, 98-H, 98-I, 98-J, 98-K, 98-L, and 98-M, were marked as exhibits and received in evidence.)

The Witness: In that latter question, Mr. Haycraft, as to whether or not Commission's Exhibits

730

Albert M. Post—For Commission—Direct.

98-A to M, both inclusive, and referring particularly to Exhibit 98-I, while in the mechanics of this transaction I would say that I believe that it is a typical transaction, this particular letter is ~~not~~ a typical letter. I notice that it was written at a time when I was away from the office, personally away from the office, and this is a reply to a letter such as I referred to before that I would not say is entirely typical.

By Mr. Haycraft.

731

Q. Can you indicate in what way it appears to be an exception? A. The thing that occurs to me as being the most important is that it is typical for us in things of this kind to offer or suggest arbitration. This letter makes no suggestion of arbitration; also on the return that I write I am rather careful not to refer to retailers who are in any way involved in this transaction. I notice that this letter has several references to retailers, which remarks are purely gratuitous and extraneous, so that with that exception I would like to, or, at least, to that extent, I think that I would like to qualify my previous statement.

Mr. Haycraft: I ask that this document be marked Commission's Exhibits 99-A, 99-B, 99-C, 99-D, and 99-E, for Identification.

732

(Letter dated June 16, 1933, consisting of two sheets, and signed by Maurice Rentner, chairman, Fashion Criginators Guild of America, Inc., was marked Commission's Exhibits 99-A and 99-B, for Identification.)

(Memorandum on Guild's Resolution and its Significance, consisting of two sheets, was marked Commission's Exhibits 99-C and 99-D, for Identification.)

Albert M. Post—For Commission—Direct.

733

(Form of Declaration of Co-operation in Anti-Piracy, was marked "Commission's Exhibit 99-E, for Identification.)

(There was a discussion off the record.)

Mr. Haycraft: I offer in evidence, Mr. Examiner, at this time, Commission's Exhibits 99-A, 99-B, 99-C, 99-D, and 99-E, which I understand counsel for respondent has no objection to because of its competency.

It is dated June 16, 1933, before this witness became associated with the organizations, so I cannot identify it by his testimony.

Mr. Weisman: No objection.

734

Examiner Bennett: Received.

(The documents referred to, heretofore marked for identification Commission's Exhibits 99-A, 99-B, 99-C, 99-D and 99-E, were marked as exhibits and received in evidence.)

Examiner Bennett: What has it reference to?

Mr. Wiesman: It seems to be a sort of circular letter sent out to the retailers sort of patting ourselves on the back that we have done a nice job if the truth must be known.

Mr. Haycraft: It is sent out by the chairman of the Guild.

I ask that this document be marked Commission's Exhibits 100-A and 100-B. It comprises two sheets.

735

(Photostat of circular letter dated April 9, 1936, from Albert M. Post, executive director, Fashion Originators Guild of America, Inc., and sent to members and affiliates of the Fashion Originators Guild of America, Inc., was marked Commission's Exhibits 100-A and 100-B, for Identification.)

736

*Albert M. Post—For Commission—Direct.**By Mr. Haycraft.*

Q. Mr. Post, I show you Commission's Exhibits 100-A and 100-B, which purports to be a letter from yourself to members and affiliates of the Fashion Originators Guild of America, Inc., on the letterhead of the Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, "Member Correspondence," under date of April 9, 1936, and ask you if you can identify that? A. First, I would like to go back to the other question you asked me about this other transaction as to whether it was typical of the time?

737. Q. Yes. A. All right. Because we have changed certain procedure, and I just happened to think of one of them.

Mr. Weisman: I have already stipulated that you could put that in evidence. Why waste time this way about it? Why not let it go in in evidence?

Mr. Haycraft: That is just one thing. Wait until I offer it in evidence. I have not offered it in evidence yet.

Mr. Weisman: I have agreed to it. Why waste the witness' time about it.

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: I have no objection. I am just trying to save some time.

738

Examiner Bennett: Without objection, it will be received in evidence.

(The letter referred to, heretofore marked for Identification Commission's Exhibits 100-A and 100-B, were marked as exhibits and received in evidence.)

Examiner Bennett: We will recess until 2 o'clock, and I shall ask you all to be here promptly.

Albert M. Post—For Commission—Direct.

739

AFTERNOON SESSION. 2 P. M.

Examiner Bennett: Gentlemen, the hearing will come to order. Mr. Post, will you come around, please, and resume the stand.

ALBERT M. POST resumed the stand and testified further as follows:

Direct examination (continued) by Mr. Haycraft.

Q. Mr. Post, do you have available the original agreement between the Guild and the Protective Affiliate members around January 20, 1936? A. There was no agreement—what was the date of that, you said? Mr. Haycraft, what was it?

740

Q. January 20, 1936.

(Question read.)

A. May I change my last answer?

By Mr. Weisman.

Q. Certainly. If your answer was wrong.

(Question again read.)

A. My answer is that I was confused with the general agreement in this matter. There was a special agreement at that time and that was made out for some of the Protective Affiliates.

741

Mr. Haycraft: I ask that this document be marked Commission's Exhibits 101-A and 101-B for Identification.

(An agreement with the Fashion Originators Guild was marked Commission's Exhibits 101-A and 101-B for Identification.)

742

*Albert M. Post—For Commission—Direct.**By Mr. Haycraft.*

Q. Do you recognize this? A. Yes.

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: No objection.

Examiner Tennett: Without objection it will be received in evidence.

(The document referred to, heretofore marked for Identification Commission's Exhibits 101-A and 101-B, were marked as exhibits and received in evidence.)

743

Mr. Haycraft: I ask that this document be marked Commission's Exhibits 102-A to 102-G, inclusive, for pages 296 to and including page 302, and Commission's Exhibits 102-H to 102-N, both inclusive, for pages 303 to 311, and Commission's Exhibits 102-O to 102-X, inclusive, for pages 312 to and including 321, inasmuch as pages 296 to and including 391 are for the month of November; whereas, pages 302 to and including 311 are for the month of December, 1935, and pages 312 to and including 321 are for the month of January, 1936.

(Monthly report of Returns—November, pages 296 to 302, inclusive, were marked Commission's Exhibits 102-A to 102-G, inclusive, for Identification.)

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(Monthly report of Returns—December, pages 303 to 311, inclusive, were marked Commission's Exhibits 102-H to 102-N, inclusive, for Identification.)

(Monthly report of Returns—January, pages 312 to 321, inclusive, were marked Commission's Exhibits 102-O to 102-X, inclusive, for Identification.)

By Mr. Haycraft.

Q. What is this document, Mr. Post, Commission's Exhibits 102-A to 102-X, for Identification? A. This is the monthly report of returns for November. It does not say what year. I think this probably is 1935.

Q. To whom is that report made? A. To me.

Q. By whom? A. The Piracy Department.

Q. Mr. Goldston's department? A. It is under his supervision.

Q. Where does he get the information contained in the report? A. It is a recapitulation of the reports that come in in detail from the shoppers during the month, the current month. I was just trying to see whether it is all November.

By Mr. Seidman.

Q. It is for three months. A. Is it? Will you change that to January, December, and—November, December, and January?

Q. What year? A. The years are not marked.

Mr. Weisman: This thing is not in evidence. I object to the witness discussing or testifying concerning an instrument that is not in evidence.

Examiner Bennett: Sustained.

Submit it to the attorney for inspection.

Mr. Haycraft: In view of what the witness has said as to the document, I ask that the November report be marked Commission's Exhibits 102-A to 102-G, the December report marked Commission's Exhibits 102-H to 102-N, and the January report marked Commission's Exhibits 102-O to 102-X.

Examiner Bennett: That has already been done.

Mr. Haycraft: With the correction in the identification. I offer it in evidence.

Mr. Weisman: No objection.

(The documents referred to, heretofore marked for identification Commission's Exhibits 102-A, 102-B, 102-C, 102-D, 102-E, 102-F, 102-G, 102-H, 102-I, 102-J, 102-K, 102-L, 102-M, 102-N, 102-Q, 102-P, 102-Q, 102-R, 102-S, 102-T, 102-U, 102-V, and 102-X, were marked as exhibits and received in evidence.

By Mr. Haycraft.

Q. Did you say this was prepared by Mr. Goldston and submitted to you? A. I said it was prepared under his supervision and direction. I believe it comes to me.

749 Q. What disposition do you make of it? A. File it.

Q. Nothing more? A. Just as a reference.

Q. That is not submitted to the members themselves?

A. Well, the individual members may receive the information regarding their own merchandise but that would be simply in not exactly extracts, but there would be a recapitulation as to that particular type of merchandise.

Q. But not the whole report? A. No.

Q. What is the significant fact of the first column in this exhibit, the names that appear in the first column?

A. The Guild-manufacturer-members.

Q. The names of the Guild members? A. Yes.

Q. Of the dress or garment manufacturers? A. Yes.

750 Q. What is the significance of the second column, "Sales Price"? A. That is the sales price—no, you must refer to the style number; there is no sales price on there.

Q. I beg your pardon. I meant to say "style number." A. Yes, sir. That is the style number of the garment.

Q. What is the significance of the third column entitled— A. (Interposing) That is the manufacturer who copied that particular style of that Guild number. It is entitled "Copyists."

Q. What is the significance of the next column entitled "City"? A. That is the city where the copyists were located.

Q. Where the retail dealers were located? A. No, where the copyists—where the shoppers or the stores, themselves, advised us that they had returned goods.

Q. Where the dresses were found and picked up? A. Where the goods were found.

Q. What is the last, "Quantity and Amount"? A. The quantity returned from that particular city on that particular style.

Q. Would the total number of the various figures in the last column be the number returned during any given month? Take, for instance, Exhibit No. 102-A, for the month of November, would the total of the figures in the last column be the total number of dresses returned during that month? A. Generally, yes, although it means really the number of dresses which were removed from sale. We assumed that they were returned. We do not know that. Secondly, there might be dresses removed from sale that we do not know about, therefore not included on this list, and, thirdly, those are the dresses that we find that the store acknowledged that they had that they said they were removing from sale that unfortunately sometimes we find they have not done so, although they have said they were removed.

Q. They were supposed to remove them? A. They were supposed to remove them from sale, but they sometimes do not do it.

Q. Now, do you have available the report— A. What?

Q. First, when did you first inaugurate the system of monthly reports from Mr. Goldston to you of their shoppers? A. Some time around the time that the shoppers were employed the first of the year 1935, so I would think it would be along about February or March of that year.

754

Albert M. Post—For Commission—Direct.

Q. Is it your testimony that Commission's Exhibit No. 102-A for November and Commission's Exhibit 102-H for December is for the year 1935, and Commission's Exhibit 102-O is the only report you have for the year 1936, being for the month of January? A. That is the only one here. We probably have others, or can get them.

Q. You have other reports for the year 1935 and for 1936 here in the court room? A. I think we have such reports. I would not be certain.

755

Room 901, 45 Broadway,

New York City, N. Y., July 17, 1936.

Met, pursuant to adjournment, at 9 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same appearances.)

Mr. Haycraft: I offer in evidence as Commission's Exhibit No. 121 for Identification, being a letter from Mr. J. M. Golby, executive secretary, Fashion Originators Guild of America, Inc., to Miss Rose E. Phillips, 420 N. Charles Street, Baltimore, Md., under date of January 14, 1935.

756

Mr. Weisman: This letter is a little different. If this letter is offered for the purpose of showing the background or evolution of the matter, I have no objection to it going into evidence. If it is offered for the purpose of showing the present existing fact, I have no objection to it. The reason therefor is that this refers to the practice which is wholly discontinued and had been discontinued long before the institution of this matter. It refers to the fact that they should be members of a retail guild. It is no longer the practice, and was not the practice at the time of the investigation or the filing of the complaint.

Mr. Haycraft: There is no evidence of that fact which has so far been introduced into this record. If that be the fact, that is one thing, but we do not know that now. So far as the testimony now goes, of course, there is no proof to that effect.

When the respondents' case is put in I will be willing then that it may not be considered for present practice, if that fact be shown conclusively to my satisfaction, but until then the offer is not restricted.

Mr. Weisman: I think Mr. Haycraft is unintentionally mistaken, I think; if he will refresh his recollection he will remember that Mr. Post testified that our contract with the Baltimore Guild expired in 1935, so obviously, is that correct?

758

(The witness shook his head.)

Mr. Weisman: The witness shakes his head and says what?

The Witness: Yes.

Mr. Weisman: Yes. So, obviously, I am correct in my statement that it can only show evolution or what went on before.

Mr. Haycraft: The failure to renew a contract does not mean by any means that there was not a continuation of the practices thereunder, and until there is proof to my satisfaction that there has not been a continuation of the practices thereunder, I am making no stipulation to that effect.

Examiner Bennett: I will overrule the objection. The document is received in evidence.

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(The letter referred to, heretofore marked for identification Commission's Exhibit 121, was marked as an exhibit and received in evidence.)

Examiner Bennett: I understand that all of these matters contained in this mess of correspondence is received as indicating the general activities of this concern. It

seems to be the center of certain activities. Whether that will mean anything or nothing when it is all brought together, I do not know. However, I am allowing this evidence to go in because I think a picture of their general activities is the best thing that we can secure; certainly, the best foundation which the Commission could have for action. It is upon that basis that it is being received in evidence.

By Mr. Haycraft.

761

Q. I would like to ask you some questions regarding Commission's Exhibits 281 and 282 just now received in evidence. I will ask you what the names indicate in the first column? A. The names of the Fashion Guild manufacturer members.

Q. What are the numbers in the second column? A. Those numbers refer to the style of their styles that were reported as being alleged copies.

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Q. What about the numbers in the last column—what do they purport to represent? A. The number of styles involved. Let me explain that by saying that this style No. 100, there may be five complaints on the same style, so that the last column, you will note, sometimes, is smaller in number than the other column. There may be five complaints on style No. 100. Therefore, in that first column, there would be five complaints, the number of styles involved would be one style. In other words, it could be copied by numerous other copyist-manufacturers.

Q. These exhibits do not contain the names of the cities where the shoppers were located and made the selection? A. No; you will recall that I told you that we advised the members of this report. This is the way it has been gotten out since the last report stopped.

Q. Was the last report the one that has heretofore been received in evidence, the only one preceding these two, or have there been others in the year 1935? A. No. We had no others.

Albert M. Post—For Commission—Direct.

763

Q. You have the shopper reports in your files from which these were made up?

Mr. Weisman: I object to the form of the question because we do not—the witness testified yesterday it was not made up from shoppers' reports. It was made up from various sources.

by Mr. Weisman.

Q. Is that correct? A. The other report was made up from shoppers' reports. This was made up from piracy reports.

by Mr. Haycraft.

764

Q. You mean piracy reports in the usual form? A. Yes.

Q. Do you have those piracy reports in your file? A. Yes.

Q. You still have the shoppers' reports from which the other exhibits were made up? A. We have all the shoppers' reports. They come in daily.

Mr. Haycraft: I would like to have the privilege of asking Mr. Post to step down as a witness and calling another witness for a few minutes.

Mr. Weisman: No objection.

Examiner Bennett: You may be excused temporarily.

(Witness temporarily excused.)

Mr. Haycraft: I will call Mr. De Lisser.

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Mr. Weisman: You are going to call him now?

Mr. Haycraft: Yes. I will call Mr. Austin M. De Lisser.

AUSTIN M. DE LISSER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Please state your full name, address, and occupation. A. My full name is Austin M. De Lisser. My residence is 140 Franklin Avenue. I live in the City of New Rochelle, N. Y. I am executive secretary of the Textile Affiliates.

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Q. Of the Fashion Originators Guild? A. Of the Textile Affiliates of the Fashion Originators Guild.

Q. How long have you occupied that position? A. Approximately a year and a half.

Q. What are your duties in that position? A. Administrative duties and carrying out the instructions of the membership the way the membership has expressed it through the governing committees or the steering committees. It is just the general administrative duties that fall upon the secretary.

Q. What governing duties do you have to do? A. I do not do anything in the way of governing. I follow out the Governing Committee's rules.

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Q. I see. What governing committees and what steering committees do you have in mind? A. I have the committees that are appointed by the membership to speak for them, or to conduct the affairs and business of the Textile Affiliates.

Q. What are the names given to those committees? A. They were called the Steering Committee previously and Governing Committee more recently.

Q. They are composed of members of the Textile Division? A. That is right.

Q. Do you have any contact with the Board of Governors of the Guild; that is, the Fashion Originators'

Guild? A. Not officially. I know them and see them, but I have no official contact with the Board of Governors.

Q. What did you do before you became executive director of the Textile Affiliates of the Fashion Originators' Guild? A. I worked for the firm of Cheney Brothers, a silk firm.

Q. They are not associated with the Guild at all? A. No.

Q. I hand you Commission's Exhibit 243 for Identification A to J, inclusive, and ask you to identify that. A. Yes, I looked at this before. This is a compilation of resolutions as it states here of the Textile Affiliates.

Q. Who prepared it? A. I don't know what you mean by "prepared."

Q. Did you have anything to do with the preparation of this document? A. I had the administrative duty of seeing that it was typed and so forth. I had nothing to do with the actual regulations as to making them or forming them, no.

Q. Where did they come from? A. Oh, they came from the vote of the membership body.

Q. Do you recall who it was that told you to prepare those documents or instructed you to prepare it? A. Well; this particular document, if I recall right, was compiled simply to take out of the minutes those definite—

Mr. Weisman: I object. I ask that the answer be stricken as irresponsible. He was asked who told him to get this up and now he is proceeding to tell what was done, and I do not think it is a proper question to be asked and be answered in that form. In other words, I do not think it is a responsive answer to the question and I move that it be stricken out.

Examiner. Bennett: If your answer is "Who," of course that could be answered very definitely.

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*Austin M. De Lisser—For Commission—Direct.**By Mr. Haycraft.*

Q. Will you tell us who it was, then later on you may tell how it was done? A. May I have the question read again?

Q. (Question read.) A. I do not recall who it was, frankly.

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Q. Do you recall the circumstances under which it was prepared? A. I am afraid I cannot be very helpful on that. It took place in March. I do not recall just when it was. This was just to help the members so certain regulations which they had put in without requiring the particular member to go through a great conglomeration of other rules and regulations in order to know. But I cannot tell you how it came out or who brought it out. All I know it was given to me to have prepared, and I had it prepared and sent it out. I do know that it was sent out. Yes, I can state that very definitely. As to just who it was who directed that it be put out, that I cannot tell you.

Q. What did you do with it? A. It was sent to the membership.

Q. Did you check it back against the minutes of the organization to see that it was correct? A. Whether I did or whether I had somebody else do it I do not know, but it should have been checked back, of course.

774

Q. You are satisfied that it is correct? A. Well, now, I have not checked it back against the minutes of every one. I presume it is correct. It was sent out in this form.

Mr. Weisman: Well, as I understand it, these are resolutions up through April 15; is that correct?

The Witness: March 5.

Mr. Weisman: March 5.

The Witness: Yes, sir.

Mr. Weisman: The complaint in this case is drawn as of April 16, as I understand it, and the charge is being tried here on July 17.

These resolutions are totally incomplete in that they are only a part of a large number of resolutions, modifying, amending, and changing these particular resolutions which will throw a great deal more light on this matter; if the Court is desirous of receiving them merely to show the evolution or background of the matter, that is one thing and I have no objection. If, on the other hand, they are received as showing the resolutions as of to-day, I object, because they do not set forth what are the resolutions as of the date of the trial, and are not evidence of any present existing practice.

Mr. Haycraft: I am offering them for whatever use they may be put to. It may turn out that later resolutions were passed before the issuance of our complaint, and respondents' answer thereto.

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Mr. Weisman: Or thereafter, for that matter. I think it will be.

Mr. Haycraft: That is something else.

(There was a discussion off the record.)

Mr. Goldwater: May it please your Honor, I would like to interrupt at this time in order to ask some questions in connection with this matter, which I think will have a bearing on the introduction or non-introduction of this exhibit.

Examiner Bennett: State for the record whom you represent.

777

Mr. Goldwater: My name is Goldwater, and I represent the Textile Affiliates. May I but briefly examine this witness to show and establish to your Honor's complete satisfaction, as I am sure I can, that this is an incomplete record of the rules and regulations; of the substance of the effective resolutions of the board governing the conduct of the members and their practices and that it does not establish the binding regulations upon them as they

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Austin M. De Lisser—For Commission—Direct.

exist at the time of this trial. I ask for permission to examine this witness to establish that factual evidence as a preliminary to offering the objection that they are incompetent, immaterial and irrelevant, and certainly improper from every standpoint to be introduced into evidence at this time.

Mr. Haycraft: I do not think that that is a sound objection to the admissibility of the exhibits. It is not any different from the objection that has been made previously and overruled.

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Mr. Goldwater: It is a further objection in that it does not appear in the record that these are not the regulations and rules that bind the body at the present time. I would like to establish that fact.

Mr. Haycraft: Even conceding that they are not for the sake of argument, that would not disturb the admissibility of this exhibit and would not defeat it. That was the contention of the respondent which was made previously and overruled by the Examiner, very properly, in my opinion.

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Examiner Bennett: I think it is well settled that the attorney for the complainant or the attorney for the Commission in this case is entitled to offer that much as is contained therein, and that it is important to his case, and that the respondent when it puts in its defense in its own case is entitled to supplement it with anything that throws any light upon that document that has been previously put in by the other party.

I will sustain that and overrule your objection.

Mr. Goldwater: I understood, now—do I now understand that my request for opportunity of examining the witness is denied?

Examiner Bennett: If you want to examine the witness for the purpose of making an objection you may do so. I did not understand that is what you wanted.

Mr. Goldwater: I would like to examine the witness upon that point. This does not contain the information that it should contain to be a proper portrayal of the situation as it exists.

Examiner Bennett: I will allow you to cross-examine for the purpose of making your objection.

Cross-examination on the voir dire by Mr. Goldwater.

Q. Mr. De Lisser, have there been rules and regulations which modify, alter, or amend this group contained in this exhibit which has just been handed to you, marked Commission's Exhibit 243 for Identification?

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Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant in this case, whether there have been subsequent changes in them because these are offered for and can only speak for what they have in them, and they are not intended to be offered for anything beyond what they contain themselves. Of course, if there has been something else at a later time that is another matter which has nothing in the world to do with the admissibility or lack of admissibility of this witness. As a matter of fact, that same objection was made a while ago, and it was passed upon and overruled. It seems to me it is simply wasting time.

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Mr. Goldwater: No. I want to show that the rules and regulations, resolutions and so forth that have been placed in this document have since been modified, amended and altered so that they do not present a true picture of what is governing the membership at the present time.

Mr. Haycraft: It seems to me that it is quite immaterial as to whether it has been changed since that time. What we are talking about is these

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Austin M. De Lisser—For Commission—Cross.

rules and regulations as they are set forth in here. What may have taken place at some other time can have no bearing upon the admissibility of this document.

Examiner Bennett: "The witness may answer the question.

A. Yes, sir.

By Mr. Goldwater.

Q. Have there been, sir? A. Yes, sir.

785 Q. I show you an instrument which is entitled "Minutes of General Meeting of Textile Affiliates, Fashion Originators' Guild of America, July 1, 1936," and ask you if that is a correct transcript of the minutes?

Examiner Bennett: July 1, 1936?

Mr. Goldwater: Yes, sir.

By Mr. Goldwater.

Q. I will ask you now whether this is a correct transcript of the minutes of the meeting held on that day, which contains resolutions, rules and regulations which alter, amend, modify or affect resolutions which are contained in Commission's Exhibit No. 242 for Identification?

A. I so believe.

786 Q. Do you know that that is a fact? A. Yes, sir; I know it is a fact.

Mr. Goldwater: I ask this be marked for identification.

Examiner Bennett: You desire to mark that for identification at this time?

Mr. Goldwater: Yes, sir.

Mr. Haycraft: I think this is the wrong time even to mark it for identification.

Examiner Bennett: It is a convenient matter. He has the witness on the stand. It is irregular, but it is convenient to do it that way and I will permit it.

(The document referred to was marked Respondents' Exhibit 2 for Identification.)

By Mr. Goldwater.

Q. I show you another instrument marked "Minutes of General Meeting of the Textile Membership of the Fashion Originators' Guild of America, Inc., May 25, 1936." I will ask you if that is a correct transcript of the minutes of the Textile Affiliates of that day and contain resolutions, regulations, and rules which alter, amend, modify or affect those contained in Commission's Exhibit 243 for Identification, offered by counsel for the Federal Trade Commission? A. Yes, sir.

Mr. Goldwater: I ask that that may be marked for identification.

Examiner Bennett: It may be so marked.

(The document referred to was marked Respondents' Exhibit 3 for Identification.)

Mr. Goldwater: I offer in evidence as preliminary to the objection these exhibits which I have had just marked for identification so that it may be clear to the Court that there are rules and regulations in existence at the present time, and at the date of this trial, which are different from and do alter, modify, amend or overrule those contained in Commission's Exhibit 243 for Identification.

Mr. Haycraft: I object to that.

Examiner Bennett: Objection sustained. They are ruled out at the present time. You may offer them again when you come to the case for the defendant.

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Austin M. De Lisser—For Commission—Cross.

Mr. Goldwater: I except.

Examiner Bennett: Exception noted.

Mr. Goldwater: I object to the admission of Commission's Exhibit 243 for Identification. It appears from exhibits now in court, namely, Respondents' Exhibits Nos. 2 and 3 for Identification that the exhibit offered does not contain the rules, regulations and resolutions which bind the members of Textile Affiliates at the date of this trial.

Examiner Bennett: The objection is overruled. It will be received in evidence.

Mr. Goldwater: Exception.

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Mr. Weisman: Exception.

Examiner Bennett: Noted.

(The document referred to, heretofore marked for identification, Commission's Exhibit 243, was received in evidence.)

Mr. Haycraft: At this time I should be glad to have a ruling as to the date that is considered to be the date of the admissibility of evidence as to time. For instance, these two exhibits which your attention has been directed relate to dates subsequent to the issuance of the Commission's complaint.

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Examiner Bennett: I will follow the practice which I have been following very generally of receiving anything which will indicate to the Commission whether or not the practice is being continued or has been discontinued. I think that they are wholly irrelevant so far as bearing on the complaint itself, or on the issues of the complaint itself, but I think that they are informative to the Commission and may well be before them as indicating whether the practice has been abandoned or has not been abandoned. That may be true as to any testimony you may have to offer on that point also.

Austin M. De Lisser—For Commission—Cross—Direct. 793

Mr. Haycraft: When it comes to the time for the defense to put in its evidence, they may then have this offer renewed by counsel for the respondent at that time?

Examiner Bennett: Yes. When the defendants come to put in their case counsel for the respondents may make this offer again and I will consider it at that time. Have you anything further to ask this witness?

Mr. Goldwater: Not at this time, your Honor.

Examiner Bennett: You may proceed, Mr. Haycraft.

Direct examination (resumed) by Mr. Haycraft. 794

Q. I show you Commission's Exhibit 244 for Identification and ask you if you can identify that in any way?

A. Yes, sir.

Q. Did you prepare it or have it prepared under your supervision and direction? A. Yes, and I think this was prepared at the request of Mr. Seidman. Our office prepared it for him.

Q. What is it? A. It is a list of the various accounts of the various garment manufacturers that we have—I do not know just how to express this—that have been in what we term a violation of our fair trade practices.

Q. Was that taken from the records of your Textile Division? A. That was taken from the records of the Textile Division; yes, sir. 795

Q. Where was the information obtained from from which this was prepared? A. It is a record, I believe, that shows a list of all of the—I do not know just how to tell you this readily—I will start all over again—at any time that we have sent a notification to our affiliates that a certain account has violated our fair trade practices, this is a list of all of the notices that have ever been sent out to the affiliates telling them about one of these accounts.

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Austin M. De Lisser—For Commission—Direct.

Q. When you say "affiliates," you are referring to the members of the Textile Division? A. Yes, sir.

Q. They are textile manufacturers? A. Yes, sir.

Q. As distinguished from garment manufacturers? What is the purpose of sending out the information contained in that? A. We never sent this list out to anybody.

Q. Or a duplicate of it? A. No, a duplicate of it was never sent out.

Q. Did you send a notice on the date indicated in this list to anybody? A. If the date is right when this went to the Textile Division concerning the particular one, it went out on the date, I presume, listed here. Yes, I think these dates are right, and on that date it went out to them.

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(Witness temporarily excused.)

Examiner Bennett: We will take a recess until 2.10 o'clock P. M.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2.10 o'clock P. M. of the same day.)

AFTERNOON SESSION, 2.10 P. M.

Examiner Bennett: We will be in order, please. Is Mr. De Lisser here as yet?

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Mr. Weisman: No, sir. Mr. De Lisser has not come back as yet, but I expect him to be here in a few moments. I saw him downstairs just a moment ago talking to somebody and waiting outside of a telephone booth. I understand that Mr. Goldwater was talking to someone about a matter in which Mr. De Lisser was concerned. I think he will be here in about two minutes. Oh, here he is now.

Examiner Bennett: Mr. De Lisser, will you resume the stand?

AUSTIN M. DE LISSER resumed the stand and testified further as follows:

Direct examination (continued).

Mr. Haycraft: What is the last question and answer?

(Last question and answer read.)

Mr. Haycraft: I offer this exhibit in evidence at this time, if your Honor please.

Mr. Weisman: Oh, I object to that. That exhibit has nothing to do with the issues before this hearing, and certainly it is not a proper piece of proof to introduce into this case upon any theory whatsoever. As I understand, the witness states that it was made up in his office by some stenographer at the request of Mr. Seidman, and that he made it up, including this list, and that it was not used in any of the activities of the Textile Affiliates, and is not a part of their records, and was simply a memorandum or record made up for the information of Mr. Seidman. He could have made it up himself, and, instead, he asked them to make it up, to make up a list for him, and Mr. De Lisser's office made it up. Certainly, the list is not evidence of anything.

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Examiner Bennett: You have the witness on the stand. If you want to get this matter in, you will have to question him further about the contents of the matter to which you desire to direct his attention. I do not think the list, itself, would be properly admissible at the present moment, at least.

801

By Mr. Haycraft.

Q. Mr. De Lisser, Commission's Exhibit No. 243, this group of resolutions, or compilation of resolutions, rules

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Austin M. De Lisser—For Commission—Direct.

and regulations, binding upon the members of the Textile Division, did you have occasion to, as executive secretary, notify any of the members of the Textile Division of a violation of any rules and regulations by garment manufacturers who were members of the Guild? A. I do not think those rules and regulations and resolutions have anything to do with the garment manufacturers.

Q. By members of the Textile Division, as set forth in this document, Commission's Exhibit No. 243?

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Mr. Weisman: May I have the question again? Co-counsel asked me to get him a chair, and while I was getting him a chair I lost the question. I am stating the reason so that I may have the question read.

Examiner Bennett: Under the circumstances, it may be read.

(Question read.)

Mr. Weisman: Why, your Honor, most assuredly I object. I cannot understand the question. I ask counsel be asked to reframe the question so I can understand it.

Examiner Bennett: The witness does not seem to have any difficulty in understanding the question, however, and since he is the one who will have to answer it, I think he may proceed.

804

Mr. Haycraft: In order to save time, I will withdraw the question and ask another one.

By Mr. Haycraft.

Q. I notice on page A of Commission's Exhibit No. 243, that right was given to you, Mr. De Lisser, to send accountants from the Guild to silk firms holding membership in the Guild for the purpose of checking the books so far as necessary to obtain adherence to the Guild's resolutions, regulations and practices. I will ask you whether or not you did do that. A. Yes.

Q. With what result? Did you find that some of the rules had been violated? A. No, sir.

Q. You found they had not? A. Yes, sir.

Q. Did you ever find any of them had violated any of the rules? A. Not through accounting.

Q. Did you in any way find that any of the manufacturers had been violating any of the rules of the Textile Division? A. Yes, sir.

Q. What did you do upon finding that out? A. Asked the manufacturer in question to come before a Grievance Committee.

Q. What was the procedure of the Grievance Committee? A. The procedure was to hear my own facts that I had, whatever it might be at hand, and to listen to the story of the so-called "defendant" and to judge whether or not he had infringed our rules.

Q. Then what was done as a result of that? A. What?

Q. Did the Grievance Committee make a report? A. The Grievance Committee sat and made their findings.

Q. To whom did they make their findings— A. (Interposing) Well, they made their findings—they were conclusive in themselves, any findings were conclusive unless an appeal was taken.

Q. Then what was done with the manufacturer that had violated the rule? A. That depends upon the case, and there were a number of things that happened. Either, for instance, we just dismissed the case upon a better understanding in the case where the defendant claimed that there was an error or oversight, or, again, it was simply dismissed with a clarification and a promise not to repeat it in the future. Each of those depended on the case.

Q. When the Grievance Committee found there was a violation, what was done? A. Well, it was handled, in other words, it was then brought out for conclusion under a proper procedure, either for fixing penalties and then determining the penalty to be affixed under that provision.

Q. Were penalties ever assessed? A. A penalty was assessed in one instance. Penalty was assessed once..

Q. This Exhibit No. 244 for Identification that I showed you a moment ago, referring to that again, were there in among the rules of the Textile Division rules which related to the conduct of the dress manufacturers who were members of the Guild or not members of the Guild?

Mr. Weisman: I object to it on the ground it is incompetent, immaterial and irrelevant, and has no possible bearing upon the issues in this case, Mr. Examiner. The best evidence of that would be the rule or the minutes itself, and not the witness' opinion with regard thereto.

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Examiner Bennett: Read the question.

(Question read.)

Mr. Goldwater: I object to it on the further ground that the question refers to an exhibit which has nothing to do with the substance of the question which the witness is required to answer, and the paper being merely a list of names, it has nothing to do with the rules and regulations, and is simply a left-handed method of trying to get this into evidence which is decidedly improper.

Mr. Haycraft: Just let me read you the title of that, and I will show you. It says, "Notice of Accounts in violation of our rulings."

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Mr. Weisman: The exhibit is not in evidence in this case. The Court has ruled that it is not competent yet and I submit again that it is highly improper in the first place, and that it is incompetent in the second place to read from it in this manner.

Examiner Bennett: Will you reframe the question? I do not see there is any necessity for your bringing in that reference to that exhibit. So long as it is marked simply for identification, I think

you can reframe your question and get what you want without going about it in that manner.

There is no objection apparently as to whether the witness has these things of his own knowledge, but the objection runs to the reference to the document.

By Mr. Haycraft.

Q. Referring again to Commission's Exhibit No. 244 for Identification, which is entitled, "Notice of Accounts in violation of our rulings"; I will ask you what is referred to in the phrase, "Our rulings"?

Mr. Weisman: I object to referring to the contents of a document not yet in evidence. Your Honor has ruled that this document may not be offered in evidence. Now my friend is referring to it and trying to get it in through the back door when the front door has been closed. The impropriety of that is so obvious that it is not necessary to call your Honor's attention to it.

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Examiner Bennett: Are you trying to refresh the witness' recollection from it?

Mr. Haycraft: I only read the title of it.

Mr. Weisman: He is stating what amounts to the substance of the exhibit.

Mr. Haycraft: The title.

Mr. Weisman: The title is a part of the substance.

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Examiner Bennett: I will overrule the objection.

Mr. Weisman: Exception.

Mr. Goldwater: Exception.

By Mr. Haycraft.

Q. You may answer. A. I am not positive of the question. It is very difficult for me to understand what it is now. Will you read the question to me again?

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Austin M. De Lisser—For Commission—Direct.

Q. (Question read.)- A. May I see the document so that I may know clearly what you mean?

Q. Yes (document handed to witness). A. Well, frankly, this was drawn up, and this statement here I cannot explain what that means. It is not what it says in so many words, because it was a list compiled because he wanted that, Mr. Seidman, and it was headed probably by the stenographer that way. I do not know how to answer your question as to what is meant by the title put on there. I do not know how to answer the question, frankly, unless you can make it more clear. It is not what this title says, identically. It was drawn as a reference for Mr. Seidman. It is not what this title identically says.

815

Q. Do you have any rulings which affected garment manufacturers? A. Certainly.

Q. What were they?

Mr. Weisman: I object to that question on the ground that the rulings are the best evidence and not what this witness thinks what they are.

Examiner Bennett: That is true. If you want to find out what the rulings were, subpoena those things into the hearing.

Mr. Haycraft: Pardon me.

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Examiner Bennett: If there is an objection, I shall have to sustain it, and there is an objection. You may, of course, bring out what they are in a general way.

Mr. Haycraft: I am trying to find out what they are. I do not know.

Examiner Bennett: What they are is the text of the rulings, as I understand it. If you are desirous of finding out what they relate to, that is another thing. I am willing to have him answer that question. I think it is perfectly proper to get that in-

formation. I think it is perfectly competent to get a general characterization as to whether there were any such rulings, and so forth.

Mr. Haycraft: That is what I am trying to find out.

A. The rules you have are incorporated in the agreement.

Mr. Weisman: Certainly, and they are in evidence.

Mr. Haycraft: I am getting there as fast as I can. I cannot ask all of my questions at once.

By Mr. Haycraft.

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Q. What did you do in enforcement of those rules in connection with the garment manufacturers?

Mr. Weisman: I object because that presupposes that he did something, and the testimony does not show that he had anything to do with the enforcement, or anything like that.

Examiner Bennett: He is asking him that.

Mr. Weisman: The vice of that question is that it presupposes something.

Examiner Bennett: You can chop that in two and ask it in two questions if you want to take a longer time.

Mr. Weisman: I do not want to take more time, but I want to get the evidence in properly so there will not be any confusion or incorrect conception of it on the record.

819

A. I had nothing to do—I did nothing—pardon me—I did nothing.

By Mr. Haycraft.

Q. Who did? A. It depended upon the rulings that you were discussing. Upon what particular ruling you were discussing at the time would depend that.

Q. What happened if the garment manufacturer did not pay 10 per cent. cutting charge imposed by the textile manufacturer? A. The textile manufacturer pursued the necessary course to collect on the basis of his bill, the bill charged, such was explained to him at the time, of course, as to the charge that was going to be made, and the basis of the collection was upon the understanding he had and the charges set forth in the bill when he got it.

821 When the garment manufacturer got the merchandise and got the bill, he could decline the merchandise and the bill with perfect propriety, but if he accepted the merchandise and the bill and declined, later, to pay, the manufacturer pursued the matter in the ordinary way to make collection.

Q. That is what the manufacturer did in his own internal organization? A. Yes.

Q. What did he do with respect to the Textile Division of the Fashion Originators Guild? A. If he failed in all attempts to collect the cutting charge he so reported the fact to the Textile Division, or to myself or to our committee that he could not collect the charges in view of proper bills and so forth. We would follow the course as to whether or not that garment manufacturer had reason for not paying it, because I would, or one of my committee would, communicate with the garment manufacturer to find out the basis for his not paying the cutting charge which accompanied the bill for merchandise. If he still declined we further offered him the right to return the merchandise.

822 If he had used the merchandise regardless of the bill and could not return it and still did not wish to pay it, then it was a question of discussing the matter with him

and showing him the unfairness of his position. If he still declined, then we would contact a number of the members who were textile firms, and if we understood that he was going to continue denying our bill—the manufacturer's bill for cutting charges and keeping the merchandise regardless of the bill and then refusing to pay, it would then be recommended to notify our membership of the manner in which this man was handling his goods and merchandise and a notification will be sent to the members telling them this was the case.

Q. Is the first item on this exhibit, Commission's Exhibit 244 for Identification, such a notice as was sent?

Mr. Weisman: I submit that is a vitally and highly improper form of question here. This is a paper which was ruled out and now we are discussing the contents of it, something on this paper for which no proper foundation has been laid.

824

Examiner Bennett: I asked him to get the information from the witness. It is neither mine nor anybody's else affair where he gets the questions with which he seeks to elicit the information. As I understand it, that paper is of no consequence unless there is some explanation of it. I think that the obvious thing to do in view of the objections is to get that information from the witness that is in the paper if you want it.

Mr. Haycraft: That is what I am trying to do.

Mr. Weisman: I have no objection to his getting information. I refer to the improper way of getting it. This paper is not before the Court. He has the information obtainable from a proper source. Now he says what is this information you have given me that is on the first line of this paper?

825

I object to it. I believe this to be a rule of law—in fact, a most elementary rule of law—that you may not read in or refer to the contents of a paper

which is not in evidence in the examination of a witness. In other words, it is obviously an indirect method of getting this paper in when he cannot get it in directly.

Examiner Bennett: I think that is the way of making the paper competent by questions, that is to find out whether it is proper or not proper. In this case, I have requested the attorney to get that information by asking questions of this witness. I think it is entirely feasible to do so. I do not see why he should bother with this piece of paper.

Mr. Haycraft: I withdraw the last question.

By Mr. Haycraft.

Q. Did you on July 16, 1935, send such a notice to the Mary Elizabeth Frocks with respect to the 10 per cent.—

A. (Interposing) What?

Q. I will repeat the question. Did you on July 16, 1935, send a notice to members of the Textile Division of the Fashion Originators Guild with respect to violations of your rule in the Textile Division of the Fashion Originators Guild of the 10 per cent. cutting charge by the Mary Elizabeth Frocks, Inc.? A. I believe I sent out a notification at that time to the members regarding that.

Q. Was that charge listed on July 19, 1935? A. I do not have anything to bear out whether it was on that date or not, but the charge has been listed.

Q. Do you want to refresh your recollection (counsel hands witness Commission's Exhibit 244 for Identification)? A. Yes, I am ready to believe that is the date on which we notified our members that the charges had been paid by Mary Elizabeth Frocks.

Q. Did you ever, in the year 1935, notify the Textile Division of a violation of the 10 per cent. charge by other garment manufacturers? A. During the year?

Q. Yes. A. '35?

Q. Yes. A. 1935?

Q. Yes. A. That is right. We did.

Q. Did you send such a notice with respect to Sakin & Lindner? A. I believe so.

Q. Did you send such a notice with respect to A. Goodman & Son? A. Yes.

Q. Did you send such a notice with respect to Linde & Rubin? A. I believe so.

Q. Did you send such a notice with respect to Price & Schlessinger? A. Yes, sir.

Q. Did you send such a notice with respect to the Japanese Silk Garment Company on February 14, 1936? A. I believe so.

Q. By the way, has that charge been lifted? A. Yes, sir.

Q. Do you know when it was lifted? A. No, I do not know. Very briefly after that.

Q. Now, did you ever send a notice to the Textile Division with respect to a violation of their rulings as to copying? A. I do not know what you mean by "copying."

Q. Copying dresses. A. We have no regulations of ours regarding copying.

Q. Did you co-operate with the Fashion Originators Guild—

Mr. Weisman: I object to that because the word—

Mr. Haycraft: I have not even finished the question yet. I demand I be allowed to finish the question.

Mr. Weisman: You have said enough already to show that the question has an elemental vice in it. I object to that because he uses the word "co-operate," and what co-operating may mean to the Court and what it may mean to me may be altogether different. It is a word which itself is speculative and is an interpretation of some action of one

sort or another. Let him state what he did do and we can determine whether he co-operated or failed to. It is a word not only of interpretation but of degree.

Mr. Haycraft: I think I should be allowed to complete my question before the objection is made.

Examiner Bennett: Yes, I think so.

Mr. Weisman: I withdraw the objection at this time, so that he may finish the question, although I think it is obviously improper.

By Mr. Haycraft.

833 Q. Did you at any time co-operate, as executive secretary of the Textile Division of the Fashion Originators Guild with the Guild; and by that I mean the Fashion Originators Guild in the enforcement of their rules against the copying of designs of garments?

Mr. Weisman: I object to that question.

Mr. Haycraft: One moment. I have not finished my question yet.

Mr. Weisman: I am sorry. You dropped your voice and I thought that you had completed the question.

Mr. Haycraft: No.

By Mr. Haycraft.

834 Q. —by refusing to sell garment manufacturers who were known to be copyists and who were not co-operating with the Guild?

Mr. Weisman: Now I certainly want to object to that question, but because it has been broken up in so many parts I will ask to have it read as a unit so that I can frame my question.

(Question read.)

Mr. Haycraft: I withdraw the question and I will ask another one.

Mr. Weisman: I think that will be better because I cannot understand it in its present form.

By Mr. Haycraft.

Q. Did you ever send out notices to members of the Textile Division giving the names of garment manufacturers that had violated the Fashion Originators Guild rule against the copying of designs? A. Well, I am not familiar with the rule of the Fashion Originators Guild, as you call it, regarding copying. I would not have sent one for that reason; I would—

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Mr. Weisman: And I submit that that is an answer. I want to know generally what he did.

Mr. Haycraft: I think the witness should not be interrupted in his answer.

Mr. Weisman: He said he did not for that reason. You asked him for that reason.

Examiner Bennett: Is there anything further to add to your answer?

The Witness: Well, I did not know about the rules.

Examiner Bennett: You were going to—

The Witness: I would not send it out for a ruling.

Examiner Bennett: You are willing to answer; what was it?

837

By Mr. Haycraft.

Q. What is your answer? A. I was going to add that we might—we have told our members of a copyist, that is known, you know, to be, as you say, a copyist. We have at times informed our members that such a copyist did exist.

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Austin M. De Lisser—For Commission—Direct.

Q. That is, you sent out the notice to the members, yourself, as executive secretary? A. Well, I saw that a letter of information was sent out.

Q. Where did you get the information upon which you based that letter? A. That information was gotten in various manners, depending upon the case. It would—it would always come after proper conversation with the dress manufacturer in question himself, with me, or with my committee, with me.

Q. Did you ever consult either Mr. Post or Mr. Golby with respect to such a situation? A. Well, I suppose I discussed it with them, but it had no bearing on what we might do.

839

Q. Do you recall sending out, on August 21, 1935, such a notice, of copying, by the Franklin Dress Company?

Mr. Weisman: I object to the form of question, "such a notice," and I submit I would like to see that notice that my friend is going to offer. I don't know what such a notice is. The best evidence of such a notice would be the notice, and let us see what it is.

Examiner Bennett: Well, I will overrule your objection; the context shows what such a notice is.

The Witness: We advised our membership of the Franklin Dress Company being a continual copyist, yes.

840

By Mr. Haycraft.

Q. Has that ever been listed? A. Oh, yes.

Q. Do you recall when? A. No, but it was a few weeks after notification went out. That is no listing, I don't know what you mean by listing. We put down no decree, or no stipulation. We just advise, and when Franklin Dress told us that it was not their policy any longer to copy, we advised our members that he has told us that it is no longer his policy to copy.

Q. Do you recall giving such notice to the membership of the Textile Division with respect to copying by the Ed-Mar Frocks, in November, 1935? A. I remember sending a letter regarding Ed-Mar Frocks to the membership.

Q. Do you remember that charge was listed in January, 1935? A. Well, I still don't agree on the word "listing," if it matters; they were told about the difficulty, because some of them don't pay any attention to the advice that is sent out, anyway.

Mr. Haycraft: I move to strike out the last part of the answer.

Mr. Weisman: I submit——

Examiner Bennett: What is the answer?

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(Last answer read.)

Mr. Haycraft: I move to strike out the answer beginning with the words "because of some of them," and so forth.

Mr. Weisman: There wasn't a question of passing, or listing, the mere thing he did was send out a notice. There wasn't anything to be listed. When a notice was sent out it was out, there was no penalty imposed upon it.

The Witness: I think the witness explained that, and it is not necessary that you bring that out.

Mr. Weisman: Oh, excuse me, your Honor, I thought we were arguing on his statement, as to whether or not that should be stricken out.

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Examiner Bennett: Oh, I think the witness looked after that.

Mr. Weisman: Then, I submit it is responsive.

Mr. Haycraft: I move to strike out the last part of the answer.

Examiner Bennett: I will let it stand.

Mr. Weisman: Excuse me, your Honor, I thought you wanted it out.

By Mr. Haycraft.

Q. How do you know that the members did not pay any attention to those notices? A. Well, I have no way of knowing whether they do or do not, other than through conversation with the members, their own choice in the matter, as to whether they consider it good business to continue business with that particular account.

Q. Did any of them tell you that they did not pay any attention to those notices? A. Oh, I have been told many times that attention had not been paid to the notice.

Q. Were you ever told that attention had been paid to it? A. Oh, yes, I have been told that attention had been paid to them; if they had not, I would not have sent notices if people did not think it was valuable.

Q. Do you recall sending out such a notice to the members of the Textile Division with respect to copying by the May Clohissie Garment Manufacturers? A. Yes, I do.

Q. In January, 1936? A. Yes.

Q. Do you remember sending out such a notice of copying by the Emanuel Gowns in February, 1936? A. I do.

Q. Do you recall sending out such a notice of copying by the Far East Bookbinder, in February, 1936? A. Yes.

Q. Did either of those last two named firms indicate that they discontinued copying? A. Oh, yes.

Q. Did you send out notice of such discontinuance to the membership? A. Yes.

Q. Did you ever send out any notices to the members of the Textile Division of the Fashion Originators Guild with respect to the violation of the returns rule?

Mr. Weisman: Wait a moment—what returns rule?

Mr. Haycraft: Resolution No. 4, Commission's Exhibit 243.

Mr. Weisman: That is all right; now we know what you are talking about. Go ahead.

The Witness: May I hear that question again?
(Last question read.)

A. Yes, we sent notification on that.

Q. Do you recall sending out such a notification on January 24, 1936, with respect to the Letty Lee Garment Manufacturing Company? A. Yes.

Q. Did you ever send out a notice that settlement had been made of that? A. Certainly.

Q. Do you recall sending out such a notice with respect to the returns rule violation by the Phoenix Dress Company in February, 1936? A. Yes, sir.

Q. Do you recall sending out notice of violation of the returns rule by the Fred A. Block Company in February, 1936? A. Yes, sir.

Q. Do you recall sending notice to the members of the Textile Division with respect to the violation of returns rule by M. A. Lipkin in February, 1936? A. Yes, sir.

Q. Do you recall a pledge of co-operation of dress manufacturers, or garment manufacturers, who were expected to sign, as to the purchase of goods from textile manufacturers that were registered with a certain bureau? A. No, sir; no, sir; not with respect to purchase, to the textile members.

Q. Do you recall a pledge of co-operation on the part of dress manufacturers, as a matter of notice to the members of the Textile Division? A. I did not understand that question.

Q. (Question read.) A. Matter of notice of what?

Q. Violation of a pledge of co-operation—did you ever send to the members of the Textile Division notice of the violation of pledge of co-operation by garment manufacturers? A. No, no.

Q. Are you familiar with the firm of Germaine-Monteil? A. Yes, Germaine-Monteil.

Q. Do you recall sending a notice of the violation of any of the rules of the Textile Division, in January, 1936? A. Yes.

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Austin M. De Lisser—For Commission—Direct.

Q. What was that rule? A. Refusal to sign the pledge of co-operation.

Q. What pledge of co-operation did Germaine-Monteil refuse to sign? A. A pledge—have we got that here? It is in evidence.

Q. Do you have a copy with you in the court room? A. Yes, I thought you had one. We have one. We have a pledge, declaration of co-operation pledge. We have not?

Q. It was asked for.

Mr. Weisman: See if you have it.
(Counsel search for the paper.)

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Mr. Weisman: We have it (handing paper to counsel).

Mr. Haycraft: That may be marked Commission's Exhibit 250 for Identification.

Mr. Weisman: What is the question?
(Record read.)

(The pledge of co-operation referred to was marked Commission's Exhibit 250 for Identification.)

Mr. Weisman: Now, I understand Mr. Haycraft offers this paper?

Mr. Haycraft: I have not offered it yet. I have not got it identified.

Mr. Weisman: He has identified it.

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Mr. Haycraft: No, he has not. The record does not show it.

Mr. Weisman: All right, I will try to help you, but you do not need my help.

The Witness: What do you want?

By Mr. Haycraft.

Q. Is that the paper which you have before you, Commission's Exhibit 250 for Identification; is that a copy of such a pledge of co-operation (indicating)? A. Yes.

Mr. Haycraft: Mr. Examiner, I offer that paper in evidence, Commission's Exhibit 250, for Identification.

Mr. Weisman: No objection. Of course this is an entirely different declaration of co-operation than the dress manufacturers. I do not want the two to be confused because of the nomenclature.

Mr. Haycraft: By the dress manufacturers?

Mr. Weisman: This has nothing to do with the type of pledge of co-operation that the dress manufacturers obtained from the retailers.

Mr. Haycraft: That is not what he said what it was.

Mr. Weisman: I know that. I just want to say by reason of using the same name, the nomenclature, I do not desire that the two shall be confused.

Examiner Bennett: Commission's Exhibit 250 is received in evidence.

(The document referred to was marked Commission's Exhibit 250 and received in evidence.)

By Mr. Haycraft.

Q. Do you recall giving notice to the members of the Textile Division of a violation, or refusal to sign a pledge of co-operation, by the Mary Elizabeth Frocks? A. Yes, I do.

Q. In February, 1936? A. About then.

Q. Has that concern later signed such pledge? A. Yes, they have.

Q. Did you send notice to that effect to the membership? A. Oh, yes.

Q. I show you Commission's Exhibit 245, and ask you if you identify that paper in any way? A. Yes, sir.

Q. What is it? A. A letter to Mr. Grossleight, United Textile Print Works.

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Austin M. De Lisser—For Commission—Direct.

Q. Did you send the original of that letter, of which that is a copy? A. Certainly.

Mr. Haycraft: Mr. Examiner, I offer that copy in evidence, as Commission's Exhibit 245, being copy of a letter from A. M. De Lisser, Textile Division, Fashion Originators Guild of America, Inc., under date of January 27, 1936, to Mr. Grossleight, United Textile Print Works, 3621 33rd Street, Long Island City, New York.

By Mr. Haycraft.

857 Q. That is the copy you furnished Mr. Seidman, is it not? A. I don't know; I presume so.

Mr. Weisman: May I ask a question, Mr. Examiner?

Examiner Bennett: Yes.

Mr. Weisman: When this letter was sent out, did it bear your signature on the bottom? I notice the copy has no signature?

The Witness: I could not possibly tell you; I do not know.

Mr. Weisman: Then I object to the offering in evidence in this form, making it appear as if it was sent by us, when it may have been sent by this witness. He says he does not know, whether it is in the form of the original or not.

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By Mr. Haycraft.

Q. Do you have a carbon copy of your letter that you sent out on that date to Mr. Grossleight? A. We should have one, certainly.

Q. Did you check this copy against that carbon? A. I have not checked this copy against it, no; I recall the letter, that is all.

Q. Do you recall when you first saw this copy? A. I think this morning when you gave it to me to look at.

Q. Do you recall giving it to Mr. Seidman? A. No, I don't recall giving it to him.

Q. You do not? A. No.

Q. Do you recall that Mr. Seidman called at your office once upon a time? A. Oh, yes.

Q. Did you at that time give him some papers? A. Certainly.

Q. Or copy? A. Or I provided them, provided that he have whatever papers he wanted.

Q. Can you look at that paper and tell from looking at it whether it is a paper from your office? A. Why, no, sir; I could not do that, no.

Q. Could you not? A. No.

Q. Is there any doubt in your mind that that is not a copy, or a carbon copy of a letter that you sent?

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Mr. Weisman: There is no doubt in my mind either. The only question in my mind is whether it is complete. I do not deny that this is a copy of the letter that went out, but I do not think it is complete, and I would like to find out.

Have you got the carbon copy here?

The Witness: I don't know that there is a carbon copy; I don't think so.

By Mr. Haycraft.

Q. It was furnished, it was a memorandum submitted to the respondents the last two weeks ago asking for information. A. Then it is here. If it is in that memo, it is here.

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Q. That is why I gave it to you this morning, Mr. De Lissner, so that you could check it. A. If it is here, I will see.

(Witness searches among papers.)

Mr. Weisman: So that your Honor may not think that these are fanciful objections, I want to

show the difference between the carbon copy and the one offered in evidence. I do not want the Court to think that I am trifling with it. Your Honor can see how serious a difference there is between the two of them (indicating papers to the Trial Examiner).

Mr. Haycraft: If there is any difference that is not any fault on our part.

Mr. Weisman: That is all right; I am not blaming you. I am merely seeking to justify myself. Of course it is not your fault. There is a difference between those two letters.

Examiner Bennett: There is a difference in the signature.

Mr. Weisman: Yes, there is.

Examiner Bennett: Well, this is—

Mr. Weisman: Let us identify it.

Examiner Bennett: This is Commission's Exhibit 245 for Identification, which is submitted to the Commission as a copy of this letter of January 27, 1936, is it?

The Witness: Yes.

Examiner Bennett: It was?

The Witness: Yes.

Examiner Bennett: Yes. I think his testimony supplies the signature, and you can show—

Mr. Weisman: We will give you a copy, with your signature.

Examiner Bennett: The signature will remain right there.

Mr. Weisman: How?

Examiner Bennett: At the present time, it can be made on the typewriter right here.

Mr. Weisman: That is all right. Conform these two copies. Put the signature there—conform these two copies—that is all.

(Witness supplies signature to exhibit referred to.)

Examiner Bennett: The Commission's Exhibit 245 may be received in evidence.

(The letter referred to, heretofore marked for Identification Commission's Exhibit 245, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Do you say you sent the original of that letter? A. Yes.

Mr. Haycraft: Has that been received in evidence, Commission's Exhibit 245?

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. Was the Doucet firm a member of the Textile Division? A. How?

Q. Was the Doucet firm a member of the Textile Division? A. Yes.

Q. Of the Guild? A. That is right.

Q. Was the United Textile Print Works a member of the Guild? A. No, sir.

Q. What was the industrial design registration that you mention in this letter? A. That is the bureau that we used to—or, rather, the whole, practically, trade uses to register designs; the design bureau in New York.

Q. Registration of textiles? A. Yes, registration of textiles.

Q. I now call your attention to Commission's Exhibit 246 for Identification, being minutes of luncheon meeting of textile members of Fashion Originators Guild, held at Empire State Club, Friday, June 16, 1933. A. What?

Q. And ask you if you can identify this as the minutes of the Textile Division of the Fashion Originators Guild,

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Austin M. De Lisser—For Commission—Direct.

copy of the minutes, which carries through June 16, 1933, through January 22, 1936? A. Yes, I believe that to be a copy of the minutes.

Mr. Haycraft: I would like to offer them in evidence. I do not know whether counsel for the respondents is going to require me to do the same with this as I had to do with the correspondence, but I make the offer in the form they are now. If that is not acceptable—

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Mr. Weisman (interposing): That is all right. I mean, these are minutes. You may offer them all at once. You can offer them at once. The correspondence was a different matter.

Examiner Bennett: That is Exhibits 246-A to EE, inclusive.

Mr. Haycraft: Yes, being minutes of meetings of Textile Members of Fashion Originators Guild, dated June 16, 1933, October 18, 1933, November 7, 1934, January 8, 1935, January 25, 1935, February 11, 1935, February 20, 1935, March 5, 1935, March 19, 1935, April 18, 1935, May 8, 1935, June 6, 1935, June 25, 1935, July 16, 1935, July 23, 1935, August 21, 1935, September 28, 1935, November 18, 1935, January 20, 1936, and January 22, 1936.

Examiner Bennett: They may be received.

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(The documents referred to were marked Commission's Exhibits 246-A to 246-EE, both inclusive, were received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 247 for Identification, which purports to be a copy of the minutes and meeting of the Embroidery Group of the Textile Division of the Fashion Originators Guild of America, Inc., February 3, 1936, and ask you to identify that as a copy?

Mr. Weismän: Does that run after this date?

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I ask you if you identify that as a copy of the minutes of that group at that time?

Mr. Weisman: No objection.

A. I believe so, yes.

Mr. Haycraft: I offer that in evidence.

Examiner Bennett: That is what number?

Mr. Haycraft: That is Commission's Exhibit 247, being copy of minutes of the meeting of the Embroidery Group of the Textile Division of the Fashion Originators Guild of America, Inc., dated February 3, 1936.

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Examiner Bennett: Received.

(The document referred to was marked Commission's Exhibit 247, and received in evidence.)

Mr. Haycraft: I have shown the witness Commission's Exhibit 248 for Identification, purporting to be a copy of the minutes of the general meeting of the Textile Division of the Fashion Originators Guild of America, Inc., February 21, 1936.

By Mr. Haycraft:

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Q. Do you identify that? A. Yes.

Mr. Haycraft: And I offer that in evidence, Mr. Examiner, as Commission's Exhibit 248.

Examiner Bennett: It may be received.

(The document referred to was marked Commission's Exhibits 248-A and 248-B and received in evidence.)

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*Austin M. De Lisser—For Commission—Direct.**By Mr. Haycraft.*

Q. I now show the witness Commission's Exhibits 249-A and 249-B, purporting to be copies of a meeting of the Screen Print Group affiliated with the Textile Division of the Fashion Originators Guild of America, Inc., held on February 3, apparently of 1936, which I ask the witness to identify.

Mr. Weisman: It bears no date.

Mr. Haycraft: I would like to have that supplied on there; will you write it in there in pencil?

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A. Yes, I identify that.

Mr. Haycraft: I offer it in evidence, Commission's Exhibits 249-A and 249-B.

Examiner Bennett: They may be received.

(The document referred to was marked Commission's Exhibits 249-A and 249-B and received in evidence.)

By Mr. Haycraft.

Q. I will ask you if you can produce a copy of the resolution or the agreement between the Fashion Originators Guild of America and the Registration Bureau, the Industrial Design Registration Bureau?

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Mr. Weisman: Are you asking me to produce that?

Mr. Haycraft: No, I am asking the witness.

Mr. Weisman: I think you should ask me.

Mr. Haycraft: I think I should ask who I want to ask.

Mr. Weisman: But you should want to ask me, I am the counsel.

Mr. Haycraft: Sorry, but I am asking the witness.

By Mr. Haycraft.

Q. Answer the question. A. There is no agreement.

Q. No? A. Therefore, I cannot produce it.

Examiner Bennett: We will take a recess for five minutes.

(There was a short recess taken.)

Examiner Bennett: The hearing will be in order, please. You may begin, proceed.

Mr. De Lisser, will you come around and resume the stand, please?

Mr. Weisman: Mr. De Lisser was downstairs, and I do not think he has gotten back yet.

Examiner Bennett: Very well. We will wait for him.

Mr. Weisman: Here is Mr. De Lisser now.

Examiner Bennett: Will you come around and take the stand, please.

The Witness: I am sorry, your Honor, to have been late.

By Mr. Haycraft.

Q. Mr. De Lisser, to your knowledge, did the members of the Textile Division of the Fashion Originators Guild of America agree to buy only print, metal, Jacquard, laces and embroideries as well as printed from those that had been registered with the Industrial Design Registration Bureau? A. Not specifically as members of the Guild.

Q. Or did the members of the Guild pledge themselves to do something—I will put it this way: What did the members of the Guild pledge themselves to do in that respect? A. As members, they did not pledge themselves.

Q. Did you secure from the members of the Guild, and keep on file a list of pledges of firms from members of the Guild to buy only registered material that I have de-

scribed? A. Both in and out of the Guild similar types of pledges were given, not specifically Guild.

Mr. Haycraft: I ask that this document be marked for identification. This is page 3, section 2, Women's Wear Daily, Monday, December 23, 1935, the heading being "Attention! Manufacturers and Converters of Metals, Jacquards, Laces, and Embroideries for the Garment Industry."

I asked the document to be marked for identification only, Mr. Weisman. I just handed it to you for you to hand to the reporter to mark.

Mr. Weisman: Well, I just wanted to save some time. I thought I might read it over in passing it to him and possibly I could agree to it.

(The advertisement referred to was marked Commission's Exhibit 283 for Identification.)

By Mr. Haycraft.

Q. I hand you Commission's Exhibit 283 for Identification, and ask you if you can identify that in any way, Mr. De Lisser? A. Yes, sir; this is an advertisement appearing in "Women's Wear" under date of Monday, December 23, 1935, Section 2, page 3, an advertisement to the manufacturers and converters advising them of the facilities for registering of designs which were afforded to them by the Industrial Design Registration Bureau.

Q. How do you identify it? A. I recall that it was an advertisement. I see that it is an advertisement.

Q. Did you have anything to do with the publication of it? A. I recall the publication of the advertisement. I know that our committee approved of the publication of the advertisement.

Mr. Weisman: May I see it now?

Mr. Haycraft: Yes.

Mr. Goldwater: May I see it?

Mr. Haycraft: Yes. I offer this in evidence.

Mr. Weisman: There is no objection.

Mr. Goldwater: No objection.

Examiner Bennett: It will be received in evidence.

(The advertisement referred to, heretofore marked for Identification Commission's Exhibit 283 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I ask that this document be marked for identification, being an advertisement appearing in "Women's Wear Daily," on Monday, January 6, 1936, Section 2, page 7, the title reading as follows: "Manufacturers and Converters Register Metals, Jacquards, Laces, and Embroideries for the Garment Industry."

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(The advertisement referred to was marked for identification Commission's Exhibit 284 for identification.)

By Mr. Haycraft.

Q. Can you identify that exhibit in any way, handing you, Mr. De Lissar, Commission's Exhibit 284 for Identification? A. I recall seeing that advertisement in the "Women's Wear Daily."

Q. Do you recall having anything to do with the text of it? A. No. I did not have anything to do with the text of it.

885

Q. Was it shown to you before it was published? A. I believe not.

Q. How many garment manufacturers voluntarily agreed to restrict their purchases to registered textiles, as indicated? A. Registered textiles or registered designs?

Q. Registered designs. A. Registered designs?

886

Austin M. De Lisser—For Commission—Direct.

Q. Yes. A. Well, I would say approximately 200. I do not know identically, but just approximately 200.

Q. Would that include practically the entire membership of the Guild? A. I think most of the Guild members, not all, but most of them, were included.

Q. Do you have any records from which you can refresh your recollection on it? A. Yes, sir.

Q. Can you do so now? A. Yes.

(Witness left the witness stand, obtained a document and studied it for several minutes.)

887

Q. What is the paper that you have there? A. That is the list that you called for of the firms that have signed the pledge with us.

Mr. Haycraft: I will ask that be marked for identification with the Commission's next number.

(The list of names of firms who have signed textile pledge was marked Commission's Exhibits 285-A, B, C, D, and E for Identification.)

Mr. Weisman: What is that?

The Witness: He just asked me to refresh my memory by looking at the list.

Mr. Haycraft: I offer it in evidence as the next Commission's exhibit number.

Mr. Weisman: No objection.

Mr. Goldwater: No objection.

Examiner Bennett: Received.

888

(The list referred to heretofore marked for Identification Commission's Exhibits 285-A, B, C, D, and E, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Did you make an investigation to determine whether or not the men whose names were on this Commission's Exhibits 285-A to E, both inclusive, had lived up to their promises? A. No.

Q. Is the pledge which these concerns signed the one illustrated and set forth in Commission's Exhibit No.—referring now to the firms listed in Commission's Exhibit 285—the concerns of which you have— A. I do not quite understand, Mr. Haycraft, your question.

Q. Perhaps it is a little involved. Is the pledge which these concerns signed, the concerns listed in Commission's Exhibit No. 285, and concerns of which you have a copy in front of you—do you recall the pledge, first, that they signed and that we are talking about? A. Yes.

890

Q. Is that the one? A. Yes, it is this one here.

(There was a discussion off the record.)

Mr. Weisman: If you want to offer this document which you have marked 284 for Identification, in evidence, I have no objection to it.

Mr. Haycraft: I offer it in evidence.

Mr. Bruce: I have no objection to it being offered in evidence.

Mr. Goldwater: No objection.

Examiner Bennett: It will be received in evidence.

891

(The advertisement referred to heretofore marked for Identification Commission's Exhibit 284, was marked as an exhibit, and received in evidence.)

Mr. Haycraft: I have no further cross-examination for the witness.

Mr. Goldwater: Mr. Examiner, it is now 4 o'clock. How long do you intend to sit this afternoon.

892 *Austin M. De Lisser—For Commission—Direct—Cross.*

Examiner Bennett: I usually sit until 4.30. Unless there is some serious reason why we should not, I shall follow that practice this afternoon.

Mr. Goldwater: I hardly see how I can complete the cross-examination of this witness this afternoon.

Mr. Weisman: Oh, as far as that is concerned, I suppose Mr. Goldwater is entitled to the first cross because it is his witness, but I shall have a very lengthy and exhaustive cross-examination of this witness after he has finished.

893

Mr. Goldwater: Well, if your Honor please, really I think it will take me about an hour and a half to two hours to question this witness, and perhaps longer.

Examiner Bennett: You will be given ample time in which to conduct your cross-examination, Mr. Goldwater. I do think, however, that we should proceed this afternoon and get along as far as we can. I want to carry the proceedings along as expeditiously as possible, yet, to deny to no one his rights.

Suppose you start your cross-examination now and we will see how we get along.

Cross-examination by Mr. Goldwater.

894

Q. Mr. De Lisser, you identified, this morning, minutes of a general meeting of the Textile Affiliates dated July 1, and which has been marked Respondents' Exhibit 2 for Identification, and the minutes of May 25, 1935, which has been marked Respondents' Exhibit 3 for Identification? A. Yes.

Q. Will you look at this again? A. Yes.

(Witness examines documents.)

Q. I ask you again, are they correct copies of the minutes of the meeting of the Textile Division as of those dates which contain resolutions, rules, and regulations which were and are in modification, alteration, or in any way affecting the regulations, resolutions, and rules offered by the Commission as Commission's Exhibit 243? A. Yes, they are and they do.

Mr. Goldwater: I offer these in evidence.

Mr. Haycraft: I object to it at this time.

Examiner Bennett: Are these the same documents you offered this morning?

Mr. Goldwater: Yes, sir.

Examiner Bennett: Sustained.

896

Mr. Goldwater: Exception.

Mr. Weisman: Exception.

Examiner Bennett: You can offer them again when the defense is being made in this case.

Mr. Goldwater: It only makes for a complication of the issue. We are examining the witness with respect to the matter brought out on direct examination. We cannot proceed very far with the cross-examination if the witness is to be restricted after the ruling of your Honor, so that the respondents may not show what the facts are in the proceeding.

Examiner Bennett: That is one of your defenses, and a very common defense that the practice has been abandoned. I am not going to do it at this time. I will when you put in your case. I think it is perfectly proper with a witness who is really connected with the respondent should put in his own defense on direct examination so that it is the subject of cross-examination.

897

Mr. Goldwater: I did not understand and do not now understand that in an administrative proceeding there is any great adherence to the strictest laws of evidence.

Examiner Bennett: I understand that is a correct decision that would hold in any law tribunal. I cannot picture one that would have permitted you to have that entered into evidence at this time. In any event, probably, I should not have even allowed you to have marked that for identification, but I did grant you that concession. Beyond that, I do not care to go.

Mr. Goldwater: Very well, if your Honor please, if that is your Honor's ruling we will have to abide by it. I think they are competent at this time and, therefore, I respectfully except.

Examiner Bennett: Noted.

Mr. Weisman: May I join, rather than go through this same procedure, join in the objection and have an exception?

Examiner Bennett: You may.

Mr. Weisman: May I state for the purposes of the record further, the ground upon which I would urge that these minutes are now admissible and competent, and that they are properly offered.

Examiner Bennett: You may.

Mr. Weisman: As I understand the situation, Mr. Haycraft for the Government has tendered a witness who has testified and identified minutes of the Textile Division. He has, however, on direct testimony not submitted all of the minutes that are extant at this time, only some of them, and I submit to your Honor with the greatest humility that it is the proper function of cross-examination for the examining attorney to bring out from this witness now that the minutes which Mr. Haycraft has submitted on direct examination are not all of the minutes, and that they are not the minutes that exist now and are in effect and force and binding upon the membership thereof at the present time of the trial.

Examiner Bennett: That has been brought out already. It is in the record. You will have your opportunity to present that when the proper time comes. You are not being deprived of any right whatever.

Mr. Weisman: Exception.

Mr. Goldwater: Exception.

By Mr. Goldwater.

Q. Mr. De Lisser, is the Industrial Design Registration Bureau a part of or in any way connected with the Fashion Originators' Guild or Textile Affiliates? A. No part of it and in no way connected.

902

Q. Is there now, or has there ever been, to your knowledge, any contract existing between the two? A. There is definitely not, and there definitely never has been any contract existing between the two.

Q. To your knowledge, is the registration of design in the Industrial Design Registration Bureau open to all persons in the industry regardless of whether or not they may be affiliated with the Fashion Originators Guild, or Textile Affiliates?

Mr. Haycraft: That question is objected to as the witness is obviously incompetent to answer it. There is no foundation to show that he has any such knowledge. In fact, he has just said that there is no connection between the two of them, and I think he has definitely estopped himself, or rendered himself incapable of answering the question due to lack of knowledge.

903

Mr. Weisman: Ridiculous; the witness should be allowed to state what he does know, and if he does not know he can say so.

Mr. Goldwater: I asked him whether it is a fact that he has any knowledge or not. If he has no

904. *Austin M. De Lisser—For Commission—Cross.*

knowledge he can say so. If he does have knowledge he can state what the knowledge is.

Mr. Haycraft: Yes, but that is not the difficulty there. The difficulty there is that the question is so framed that his answer would be a double one. You are first asking him whether he has any knowledge and at the same time you are asking him what the fact is. You should first ask him whether he has any knowledge, and then ask him what that knowledge will show.

905

Mr. Goldwater: Mr. Haycraft, if you will be kind enough to permit me to do so, I shall ask the questions in my own way, in the form that I think is proper, and I shall not call upon you to assist me in asking the question. In the event you should disagree with any of my questions, you are at perfect liberty to object to them, but I will ask the questions in the form that I think proper.

Mr. Haycraft: And I shall object.

Mr. Goldwater: You have a perfect right to do so.

Examiner Bennett: It is a question again of chopping up the question. I think you made the same objection when the questions were being asked by Mr. Haycraft. In order to be consistent, I would have to sustain the objection, and I sustain the objection, furthermore, upon its merits.

906

Mr. Weisman: I think your Honor will notice that this is not objectionable upon the same grounds as the other question. This is a question as to whether he knows.

The Witness: Am I to answer?

Mr. Haycraft: No.

Mr. Goldwater: Wait a minute until this is settled.

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: I will say, as I said before, that in his previous answer he said there is no relationship and no agreement between the two, and, therefore, there is no foundation for the question.

Mr. Goldwater: He still may know. He does not have to have a stock certificate in order to gain knowledge.

Mr. Haycraft: He has yet to show whether he knows or not. You must show what he does know first, and then get it out.

Examiner Bennett: Read the question again.

(Question again read.)

Examiner Bennett: I will overrule the objection and listen to his answer.

A. To my knowledge, as having worked in the textile industry for ten years previous to the Fashion Guild employment, I do know that the Industrial Design and Registration Bureau is open to anybody that wishes to use it in the industry.

By Mr. Goldwater.

Q. Now, you have shown Mr. De Lisser minutes of the meeting of the Screen Group of Textile Division, marked—or, rather, it has been shown to you, this exhibit containing minutes of the meeting of the Screen Group of the Textile Division, marked Commission's Exhibits 249-A and 249-B. Do you recall that? A. I am sorry. I did not check the question on account of the noise.

Q. You have been shown, Mr. De Lisser, minutes of the meeting of the Screen Group of the Textile Division, marked Commission's Exhibits 249-A and 249-B. Do you recall that? A. Oh, yes.

Q. Is that a copy of the minutes of the only meeting?
A. What?

910

Austin M. De Lisser—For Commission—Cross.

Q. Do you know of any other meeting of the Screen Group of the Textile Affiliates besides this one which purports to have taken place on February 3, 1936? A. That is the only meeting.

Q. Only? A. Only.

Q. Was there ever a perfecting of a Screen Group of the Textile Affiliates?

Mr. Haycraft: That is objected to.

A. No, sir.

Mr. Haycraft: Just a minute.

911

Examiner Bennett: Read the question.

(Question read.)

A. No, sir.

Mr. Haycraft: I object to the witness answering until I get my objection in.

Mr. Goldwater: You must not answer until the objection is ruled upon, Mr. De Lisser.

The Witness: I am sorry.

Examiner Bennett: The objection is overruled; you may answer.

A. No, sir.

By Mr. Goldwater.

912

Q. Was there a Screen Group of Textile Affiliates on April 6, 1936? A. Oh, no.

Q. No? A. No.

Q. Did any members of the so-called Screen Group of the Textile Affiliates ever pay any dues to the Textile Affiliates? A. No, sir.

Q. Has there ever been any agreement between Textile Affiliates and the Screen Group—in other words, has ever

there been any agreement between the Textile Affiliates, as such, and the Screen Group? A. No, sir. There has never been any agreement between the Textile Affiliates and the Screen Group.

Q. Now, will you tell us what occurred with respect to this so-called "Screen Group of Textile Affiliates" immediately after February 3, 1936? A. Immediately after this meeting which was at the request of the screen printers to affiliate themselves with our Guild and which proceeded with this particular meeting which they held with me immediately following that, I called the various ones in our Textile Division that have an interest in screen printing, and told them that the screen printers did wish to affiliate. Further, that they had been discussing privately and on the side between members and screen printers this matter, and they had had this meeting for affiliation purposes, and these people disagreed and felt I had no right personally to take it that far—I am telling you what happened about it now, and—

914

Mr. Haycraft: I object, if your Honor please, as irresponsive, and I think furthermore this question is susceptible to the objection raised before because it is a violation of your ruling.

It is a matter of defense and should be put in on the part of the respondents' defense. It is not proper cross-examination.

Mr. Goldwater: It is a direct explanation of an attempt in connection with the Commission's offer in its effort to establish here a connection between the so-called Screen Group and the Textile Affiliates.

915

By Examiner Bennett.

Q. Can you identify the time that all of this took place?
A. Yes, sir. Right after February 3.

Q. It was in February? A. It was in February; yes, sir.

Mr. Haycraft: I do not think it is proper for this witness to be allowed to tell what the members of the group told him. That is hearsay.

Examiner Bennett: That objection is sound.

By Mr. Goldwater.

Q. Did you have certain conversations, without telling what they were, with the members in regard to this matter? A. Yes, sir.

917 Q. After such conversations what did you do with respect to this Screen Group? A. I conveyed the fact that they did not wish that affiliation and they promptly withdrew the desire for affiliation.

Q. Has there been any affiliation since that time? A. No, sir.

Q. At any time? A. No, sir.

Q. Was there ever any actual affiliation and co-operative action between the two? A. There was never a consummation of affiliation; there was never dues paid; there was never any co-operative action between the two.

Q. I call your attention to Commission's Exhibit 245, being a copy of the letter signed by you and sent to Mr. Grossleight. A. Yes.

918 Q. Prior to the sending of that communication, namely, Commission's Exhibit 245, had there been any conversation with Mr. Grossleight, the person addressed in that letter, with respect to the subject-matter therein? A. Oh, yes.

Q. Did you have conversations with him? A. Oh, yes, I acted as chairman, if you will, of one of the particular committees which he asked for.

Q. This letter refers to a determination of certain issues in dispute, does it not? A. It does.

Q. Wherein you discussed those matters with Mr. Grossleight? A. It very decidedly discusses them with Mr. Grossleight.

Q. Were they discussed at any other time? A. Yes.

Q. At a committee meeting? A. Yes.

Q. Did a committee sit? A. Yes.

Q. And based upon the facts there shown? A. A committee after the request of Mr. Grossleight.

Q. He requested the committee? A. Yes, sir; he requested the committee.

Q. Did he ever express satisfaction or dissatisfaction with the selection of the committee?

Mr. Haycraft: Object.

920

Examiner Bennett: Sustained.

Mr. Goldwater: Exception.

By Mr. Goldwater:

Q. Can you tell us the circumstances which led to the selection of this committee?

Mr. Haycraft: I object.

Mr. Goldwater: It seems to me that that is perfectly competent. Here we have the letters which seem to be the result of certain action. Now, whether or not that was arbitrary action or whether it was considered action with the co-operation of the person addressed is extremely relevant here.

921

Examiner Bennett: Overruled.

A. You will note that the date of the letter, January 27, is just in advance of the one meeting which the screen printers had on February 3. The reason why Mr. Grossleight of the United wished to have—

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

By Mr. Goldwater.

Q. Tell us what happened, and not why it happened.

A. He requested the Textile executive secretary, myself, to appoint a committee that he would approve, in fact, a committee that he would provide of his own choice, to sit and hear a disclosure of the misunderstandings between himself and the firm of Doucet, and to act more or less as an informal arbitration committee and to advise both the firm of Doucet and the United how they felt about this particular disposition, or, rather, how they felt about this particular matter of which he enumerated two or three items.

923

Q. That was done? A. That was done. He came to that meeting with his sales manager.

Q. Did he present his facts to this committee? A. He presented his acts and his facts in full to that committee.

Q. Were you present at that time? A. Yes.

Q. Was he afforded every opportunity to present the material that he desired? A. Yes, sir. He was afforded every opportunity that he asked for.

Q. That committee rendered its decision after such a hearing? A. Yes, sir; it rendered its decision after that.

Q. Do you recall counsel for the Federal Trade Commission's questions with respect to certain firms who were in violation of the cutting charge rule? A. Yes.

924

Q. There were certain others to whom notices were sent, or, rather, of whom notices were sent to your Textile members that they were confirmed copyists? A. Yes, sir.

Q. And certain others of which notices were sent that they were violative of the fair trade practices returns rule? A. Yes, sir.

Q. Then there were two cases, Mary Elizabeth Frocks and one other concern of which notices were sent that had refused to sign the pledge of co-operation? A. Yes, sir.

Q. The total number of cases that counsel read to you was seventeen? A. Yes, sir. I believe my recollection is that there are seventeen there.

Q. Six of them come into the cutting charge category? A. Possibly.

Q. Five in the copyists? A. Possibly.

Q. Four returns? A. Possibly.

Q. Two, refusals to sign the pledge? A. That list will verify that.

Q. Will you look at this memorandum and see if that is a fact? A. That is correct.

Q. How long has the Textile Affiliates been in existence? A. Since the inception of the Guild in 1932.

Q. Between 1932, the inception of the Guild, and April, 1936, is this the total number of cases—

Mr. Haycraft: That is objected to. This witness has said that he has only been with them for a year and a half.

The Witness: I was a member of the industry before and had the information.

Mr. Haycraft: As secretary, and this witness has not been properly qualified, and I do not think the foundation has been laid.

Mr. Goldwater: I withdraw the question.

Mr. Weisman: He said he was a member, and would know.

Mr. Haycraft: Just because he is a member does not give him a right to make wild statements.

Mr. Goldwater: It would not be a wild statement.

By Mr. Goldwater.

Q. Prior to your association with the Textile Affiliates was the concern that you were a member of connected with them? A. Yes.

Q. You were familiar with its operations? A. Yes.

Q. Which firm were you with? A. Cheney Brothers were members of the Textile Affiliates.

Q. What committee were you on, if any? A. I was on the Governing Committee.

Q. You were on the Governing Committee while you were employed by Cheney Brothers? A. Yes, sir.

Q. Did you attend meetings regularly? A. Yes, sir.

Q. And were you familiar with all of the actions taken between the period, June, 1932, and the period when you became associated with it as executive secretary? A. Yes, sir.

Mr. Haycraft: That is not proper cross-examination.

Mr. Goldwater: It is a direct reference to this particular matter brought up by the Commission.

Mr. Haycraft: He is going back of the time I took up.

Mr. Goldwater: I assume you do not mean to say that you left out any of these violations—that you were so violative of your duty as to perfectly omit any violations you knew of at any other time—in other words, if you could find any from 1932 to 1936 you would have put that in; if you knew of any before you would put them in?

Mr. Haycraft: You may have made some violent assumption, but I cannot help that.

Mr. Goldwater: I do not believe that you would be so remiss to your sworn duty as to fail to do so.

Mr. Haycraft: Do not worry about my sworn duty. My understanding from the witness was that this record was begun with 1935, and these rules and regulations during that period of time existed. This witness was not asked anything about before this; about this early period with respect to this transaction.

Examiner Bennett: I will confine it to the period of this request upon the part of Commission's counsel upon direct when he inquired about this matter. If you want to ask questions about that you may do so.

Mr. Goldwater: I will accept your Honor's ruling. I will have to take his answer within the period that you have limited me to. I think we should be allowed to show the full picture on cross-examination.

Examiner Bennett: That seems to be the thing that is under consideration here. Your examination will be limited to the period of time covered by counsel on direct examination.

932

By Mr. Goldwater.

Q. Confining your answer to the period in question, Mr. De Lisser— A. Yes.

Q. —which is the time during which there were in existence the regulations and resolutions which have been offered in evidence as an exhibit—

Mr. Goldwater: I withdraw that question.

Mr. Haycraft: These violations were all for 1935.

Mr. Weisman: Let me see the exhibit containing those regulations and resolutions.

(Mr. Haycraft hands counsel a document.)

Mr. Weisman: What is the idea? Don't you understand English? You know what I asked you for. I asked you for the resolutions. These resolutions go back to 1932. Can you get that?

933

Mr. Haycraft: I gave you something which will give you the information you ought to have.

Examiner Bennett: I think they are in evidence.

Mr. Haycraft: The direct examination relates to 10 per cent. cutting charges, the return rule, and those were during the year 1935.

934

Austin M. De Lisser—For Commission—Cross.

The Witness: I think we had them before that.
We had them before that.

By Mr. Weisman.

Q. When did you have them? A. We had cutting charges before.

Examiner Bennett: You are cross-examining upon the direct examination, and you must confine it to the scope of the direct examination.

Mr. Goldwater: For the present, I will confine myself and confine the witness to the period between March 19, 1935, and April 19, 1936.

935

Mr. Haycraft: All right.

By Mr. Goldwater.

Q. Were there any other notices of violation of any of the rules, regulations, or resolutions of the Textile Division sent to any of the members during that period of time except those concerns which you have already testified, seventeen in number? A. That is all.

Q. All? A. All.

Q. That is the total number in that period of over a year? A. Yes.

Q. Now I direct your attention to the six that have to do with the 10 per cent. cutting charge that you enumerated. A. Yes.

936

Q. In connection with the cases of Mary Elizabeth Frocks concerning which you were asked questions by counsel for the Federal Trade Commission, are you familiar with the sending of the notices? A. I am familiar with the sending of the notices.

Q. Are you familiar with the circumstances which led to the sending of the notices? A. Yes, sir; I am.

Q. Was there a hearing held with respect to that? A. There was a hearing held in respect of that, and there were

many committees that went to see Mary Elizabeth and to talk with him, and I personally saw Mary Elizabeth on several occasions and discussed this problem.

Q. Was it your endeavor to persuade Mary Elizabeth Frocks, that the refusal to pay the 10 per cent. cutting charge in that case was an unfair practice? A. Yes, sir; on the basis of the fact that he accepted the merchandise and the bill and used it and that he should not protest the bill after using the merchandise.

Q. Did you see Mary Elizabeth on more than one occasion and exp. in that point of view? A. Yes, sir; I saw Mr. Louis Lipscheetz, the head of Mary Elizabeth Frocks, on several occasions.

938

Q. After you had exhausted your efforts to explain that it was an unfair practice, was it then that the notice was sent to your members that he had violated the fair trade practice provisions? A. After everything had been done after our Steering Committee had heard the evidence and we were satisfied that nothing further could be done we sent word to our members that this was the attitude of Mary Elizabeth Frocks.

Q. I call your attention to the matter of Sakin & Linder, which is in the category of the 10 per cent. cutting charge violation. Was there a hearing in that case? A. It followed exactly the same procedure. There has been much time and effort spent between the time when we first knew of the deduction and the time that we notified our members in which we discussed this matter in every conceivable way and tried to reach a settlement.

939

Q. In each one of these cases did the Textile Affiliates satisfy themselves that there had been an acceptance of the merchandise and the bill prior to a refusal to pay the 10 per cent. cutting charge? A. Yes, sir.

Q. In the case of Gutterman & Company, and the Japanese Silk Garment Company and others, were there hearings in those cases? A. Yes, sir.

940

Austin M. De Lisser—For Commission—Cross.

Q. Were persons representing those firms at the hearings? A. Persons representing those firms were at the hearings.

Q. And were those persons representing those firms heard? A. Yes, sir.

941

Q. Representatives of those firms were heard. In each of those instances was it established to the satisfaction of the committee which heard the cases that there had been an acceptance of the merchandise and the bill prior to the cutting of the goods, so that they were fully advised that there would be this 10 per cent. cutting charge, and previous to the notice by the accepting firm that they would not pay the 10 per cent. cutting charge?

Mr. Haycraft: I object.

Examiner Bennett: What the committee reported is objectionable?

Mr. Haycraft: I do not think he should state hearsay.

Examiner Bennett: What the committee reported he could state. He is competent to state what the committee reported, but he is not competent to state whether it was satisfied or not. That would be a conclusion.

Mr. Goldwater: I see.

By Mr. Goldwater.

942

Q. Did the committee report in each instance, Mr. De Lisser, what— A. I did not understand.

Q. Did the committee report in each instance that the merchandise had been accepted and the bill accepted prior to the refusal to pay the 10 per cent. cutting charge? A. Yes, sir.

Q. Did you satisfy yourself, personally, in each case that that was the fact? A. Yes, sir.

Q. Did you communicate with each one of these persons as executive secretary? A. Except those out of town and there I communicated either with the representative if there happened to be one in New York, as there usually was, maybe there might have been one out of town only that I had not spoken to, but I doubt it because I usually saw the New York representative or talked to someone in the Chicago market who talked for me. Otherwise, I personally saw them.

(Witness temporarily excused.)

Examiner Bennett: We will adjourn until Monday morning at 10.15 o'clock A. M.

(Whereupon, at 4.15 o'clock P. M., July 17, 1936, the hearing in the above-entitled matter was adjourned.)

Room 901, 45 Broadway,
New York, N. Y., July 20, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same appearances.)

PROCEEDINGS.

Examiner Bennett: You may call your witness, and proceed. Be in order, please. 945

Mr. Goldwater: Shall I proceed, your Honor?

Examiner Bennett: Yes.

AUSTIN M. DE LISSER was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Cross-examination (continued.)

Mr. Goldwater: Your Honor, before I proceed, there are several obvious errors that should be corrected, typographically, principally, I think, on some misunderstanding of the reporter.

I refer first to page 335 of the record, the first question on that page is: "Q. What did you do before you became executive director of Textile Affiliates of Fashion Originators Guild?" That question was addressed to this witness. The answer, as it appears in the record, is: "A. I worked for the firm of Cheney Brothers, a silk firm."

By Mr. Goldwater.

Q. Is that correct, Mr. Witness? A. That is correct.

Mr. Goldwater: The next question is: "Q. They are not associated with the Guild at all?" The answer, as it appears in the record, is: "A. No."

By Mr. Goldwater.

948 Q. Was that question and answer so asked so answered by you? A. No, I believe the question was, "Was I at that time affiliated with the Guild, not Cheney's," and I said, "no"; in other words, the question was that I had no relation to the Guild.

Mr. Weisman: I think that is correct.

Mr. Martin: That is correct, I think.

Mr. Goldwater: Is that correct, Mr. Martin?

Mr. Martin: Oh, yes.

By Mr. Goldwater.

Q. You so understood? A. Yes.

Q. Cheney Brothers was associated with the Guild? A. Yes.

Q. But you were not associated with the Guild at the time you were employed by Cheney Brothers? A. That is correct.

Mr. Goldwater: I believe we all understand that now.

On page 351 of the record a question is continued on the first line which begins at the bottom of page 350 as follows: "Q. Did you in any way find that any of the manufacturers had been violating any of the rules of the Textile Division? A. Yes, sir."

950

By Mr. Goldwater.

Q. To which manufacturers did you understand that question to have reference, the dress manufacturers or the textile manufacturers? A. He was referring at the time to textile manufacturers, I believe, entirely.

Q. When you answered "Yes," your answer referred to— A. Textile.

Q. —to textile manufacturers? A. Yes.

Q. Not dress manufacturers? A. Yes, that is right.

Q. On page 373 of the record a question by Mr. Haycraft, just below the middle of the page: "Q. Do you recall giving notice to the members of the Textile Division of a violation, or refusal to sign a pledge of co-operation, by the Mary Elizabeth Frocks? A. Yes, I do. Q. In February, 1936? A. About then."

951

By Mr. Goldwater.

Q. Now, Mr. Witness, that question is in the alternative, or, rather, conjunctive, it says "of a violation, or

refusal to sign a pledge." Which was it that occurred in February of 1936? A. Refusal to sign a pledge.

Q. And that is the subject of which notice was given to members of Textile Division? A. That is right.

Q. Now, which pledge of co-operation was it that you gave notice of refusal to sign, was it the Fashion Originators Guild pledge or that of the Textile Division? A. That of the—pledge of co-operation with the Textile Affiliates.

Q. The Textile Affiliates? A. Yes.

Q. Now, Mr. Witness, will you tell us, if you know, whether the Industrial Design Bureau, which has been referred to frequently in your last examination, was in existence prior to the formation of the Guild? A. Yes, it was definitely in existence.

Q. You know that of your own knowledge? A. I know that as a fact.

Q. Do you know how long it was in existence prior to that time? A. I believe it to be three years prior to that time.

Q. In your testimony, at our last session, you were asked what occurred when notice of violation of your rules or regulations of fair trade practice requirements occurred, and you testified that hearings were held before the Grievance Committee, and so forth. Do you want us to understand that that occurred in every instance, in the seventeen cases of violation which were cited here by Mr. Haycraft the other day? A. No, I just want it understood that opportunity of hearing was given in every opportunity—I mean in every case of violation, but sometimes an account refuses that opportunity regardless of how much I may urge them to avail themselves of it.

Q. Do I understand, then, that there was no notice that a violation existed ever given to the members of Textile Affiliates until after a reasonable opportunity had been afforded? A. I believe that is absolutely true on all of them.

Q. Now, these rules and regulations which incorporated your fair trade practices were first promulgated in November and December, 1934? A. That is when they had their start.

Q. Is it fair to say that generally there were four of these principal headings under these fair trade practice requirement sections, that is, the returns regulations, the subsidized advertising, and uniform terms of sale, uniform discounts, and the cutting charges? A. That is the substance of the fair trade practices.

Q. Now, prior to November or December, 1934, was there in existence any agency which recognized those particular vices in the trade generally? A. Well, at least three of them were recognized by the N.R.A. codes.

Q. Which three? A. The returns regulations, subsidized advertising, and the uniform terms or discounts.

Q. The one which was not recognized in the code was this 10 per cent. cutting charge? A. Not in all codes—

Mr. Martin (interposing): , Your Honor please—

A. (Resumed) In some.

Mr. Martin: I object to this line of questioning. The question of the code is not before the Court, and the questions that counsel are asking here is not proper subject of cross-examination.

Mr. Goldwater: Well, I will desist from anything further on that line, if there is any objection to it.

Mr. Weisman: I, of course, Mr. Examiner, do not agree, but in the friendliest spirit disagree with my co-counsel, and at the proper time I will urge the materiality of showing what were the accepted vices adopted by the industry under N.R.A., believing that they will be of some probative force, so that the Court may decide the true and correct

background, but I do not urge that now since my conferee, in his examination, has waived it. I do want to reserve the right to argue it at length.

Examiner Bennett: All right; I will sustain the objection at this time. I understand the facts that the attorney has acquiesced in,

Mr. Goldwater: I will desist any further inquiry on that line.

By Mr. Goldwater.

959 Q. Mr. De Lisser, your attention was called here to several exhibits, two exhibits, one of which was marked only for identification and one in evidence, the other day, containing advertisements in connection with the Industrial Design Bureau registration. You recall those exhibits, do you not? A. Yes, sir.

Q. I ask you whether there or not if there were registration—first of all, I ask you whether or not, to your knowledge, firms other than members of the Guild had available to them the services of the Industrial Design Bureau? A. Firms other than Guild firms had available the same service at the same rates from the Industrial Design Bureau. Might I state that there, I happen to know, far more designs are registered by non-members of the Guild, in total, than the designs registered by Guild members at that same Bureau.

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Mr. Haycraft: I move to strike the last part of the answer, it is not responsive.

Mr. Goldwater: It may not be responsive, it is extremely material. Why put me to the trouble of asking another question if it is material?

Examiner Bennett: I will let it stand; go ahead.

By Mr. Goldwater.

Q. Now, do you know, of your own knowledge, that if there were a registration by a firm not a member of the Guild, would the patronizing of a firm so registered constitute a violation of a pledge or of any rule or regulation of the Guild of Textile Affiliates?

Mr. Haycraft: That is objected to, Mr. Examiner. The pledge is in evidence; it speaks for itself. I am going to object to this type of question as being a part of their defense, Mr. Examiner, not a part of proper cross-examination of this witness. He will have a number of other witnesses to testify in this case. An opportunity will be given respondents to put in their case when the time comes.

962

Mr. Goldwater: An opportunity should be given us to inquire concerning an exhibit you have in evidence from which an inference or conclusion, or any other determination, might be drawn.

Mr. Haycraft: The witness—

Mr. Goldwater: This concerns your exhibit.

Mr. Haycraft: It will speak for itself.

Examiner Bennett: Excuse me. The question is defective, as the Examiner sees it, as a hypothetical statement. If you can make it affirmative and factual, why—

Mr. Goldwater: I will make it affirmative and factual. I will withdraw the question.

963

By Mr. Goldwater.

Q. Mr. De Lisser, do you know of any case in which the patronizing of a firm which registered a design, which firm was not a member of the Guild, by such member or by members attached to affiliates was considered or treated as a violation of pledge, or of any rule or resolution of your Textile Affiliates?

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Austin M. De Lisser—For Commission—Cross.

Mr. Haycraft: That is objected to.

A. I think you mean——

Examiner Bennett: Just a moment——

A. I think you mean——

Examiner Bennett: Just a moment, now, please.

Mr. Goldwater: Just a moment, there is an objection, Mr. Witness.

Examiner Bennett: What are the grounds of objection?

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Mr. Haycraft: On the ground, Mr. Examiner, it is not proper cross-examination of this witness on the exhibits that have been offered in evidence and identified by him.

Examiner Bennett: You believe it is going outside of the direct examination, you mean?

Mr. Haycraft: Yes.

Examiner Bennett: Well, I think it is outside of the direct examination; I will sustain the objection.

Mr. Goldwater: Exception.

By Mr. Goldwater.

966

Q. Mr. De Lisser, is there any provision in the rules, regulations or by-laws, or resolutions, Textile Affiliates, providing for a penalty or sanction of any kind in connection with a member selling an account which may be in violation?

Mr. Haycraft: Same objection.

A. No.

Mr. Haycraft: It speaks for itself.

The Witness: No.

Mr. Haycraft: Same objection.

Mr. Goldwater: Withhold the answer.

Mr. Haycraft: It is a matter of evidence, Mr. Examiner; not proper cross-examination on exhibits that have been identified and received in evidence.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Overruled. You may answer.

A. There is no ruling or regulation regarding a member selling an account that is in violation.

968

Examiner Bennett: We will have a recess of five minutes. I am obliged to make a telephone call.

(There was a short recess taken.)

Examiner Bennett: You may proceed.

By Mr. Goldwater.

Q. Mr. De Lisser, I direct your attention to the pledge which is in evidence as Commission's Exhibit No. 250. I will ask you whether or not the invitation to sign that pledge was sent by your members only to members of the Guild? A. No, sir.

Q. Can you tell us to whom it was sent? A. It was sent in stages to all garment manufacturers with whom our firms dealt irrespective of whether the garment manufacturer was a Guild member or not.

969

Q. Now I ask you categorically with respect to the six firms who were in violation on account of cutting charges. A. Yes.

Q. There were, in all, some seventeen firms that were in violation for all cases? A. Yes.

Q. You say that with respect to each of those six, and all of them, an opportunity for explanation and hearing

was given before notice of violation was sent to the members; is that correct? A. Yes, sir.

Q. As to the other eleven, those who were violators in the category of copyists, returns-rule, and the two who refused to sign the pledge of co-operation, were each of those invited to discuss the violation before notice of violation was sent to members? A. They were all given the same opportunity before violation notice was sent, to discuss in any way they wished the matter which was under discussion.

Mr. Goldwater: That is all.

Mr. Weisman: May I ask the witness a few questions, your Honor?

Examiner Bennett: You may.

Mr. Weisman: Thank you, your Honor.

Examiner Bennett: Go right ahead.

By Mr. Weisman.

Q. Mr. De Lissac, you were asked at your last examination at the hands of Mr. Haycraft what you had done before you came with the Guild. I believe you answered that you were engaged or employed by Cheney Brothers. A. Yes, sir.

Q. What business is Cheney Brothers in? A. Silk manufacturing and selling of textiles.

Q. How long were you engaged by them prior to coming with the Guild? A. Between nine and ten years.

Q. During all of this nine or ten years with Cheney Brothers, were you engaged in the same business that you have testified that you were engaged prior to your coming with the Guild? A. During the entire time.

Q. During that time, briefly what were your duties with Cheney Brothers?

Mr. Haycraft: That is objected to as incompetent, irrelevant and immaterial.

Examiner Bennett: I will overrule the objection. I will allow you to bring that out so long as you confine it to reasonable length.

The Witness: What is the question?

(The question was read as follows: "Q. During that time, briefly what were your duties with Cheney Brothers?")

A. I went into Cheney Brothers as a stock boy and took charge of the stock room, the putting of pieces together and things of that sort. Then I rose in short stages to be assistant salesman on the floor, and following that I went into the mill contact, the contacting of those to whom we might sell. From then I went into the selling directly, and from that I went into the work of an adjuster, and I then became assistant sales manager, and from that I became sales manager to the garment manufacturers, and assisting in the styling of lines, and the manager of salesmen selling the line.

By Mr. Weisman.

Q. In connection with the exercise of your functions and duties in the various positions you have told us about, did you become acquainted with all of the problems that presented themselves to Cheney Brothers in connection with the operation of their business as a manufacturer and a seller of silk?

Mr. Haycraft: May I have an objection to all of this line of testimony, if your Honor please?

Examiner Bennett: I will sustain an objection to that.

Mr. Weisman: Quite true, your Honor. That is what I am attempting to do now. I am attempting to come to that very point, but I am trying to lead up to it by logical steps. In order to lay my proper

foundation, and in order to have my record properly made up here, I am trying to show his experience and knowledge before I ask him other questions which otherwise would not be proper for me to ask.

Examiner Bennett: If that is all you desire, I think I will admit that he is experienced in the line.

Mr. Weisman: The Court has ruled that his experience and his expertness is conceded.

Examiner Bennett: I will admit that he is a practical expert. Proceed.

Mr. Weisman: I submit it is a matter of great importance, your Honor.

Examiner Bennett: You have your confession on the record. Go ahead and examine the witness.

By Mr. Weisman.

Q. Mr. De Lisser, Mr. Haycraft has queried you somewhat at length upon these cutting charges. Do you remember that line of inquiry? A. Yes, sir.

Q. I believe there were about six or seven examples thereof. Will you explain these briefly, just what cutting charges are? A. The cutting?

Q. The practice generally with regard to that before you came into the Guild, and what you did with relation thereto.

Mr. Haycraft: I have no objection to a brief explanation of the cutting charges, as to the facts thereof, but it seems to me that any argument upon the desirability or undesirability thereof is quite improper at this time. I do object to anything of that kind.

Mr. Weisman: There has been a lot of argument put into the record by counsel for the Commission, and it seems to me that we would have been through

with all of this a long time ago if we had not been so continuously interrupted during the time that we were trying to put it in.

Examiner Bennett: Further argument by counsel is not necessary. The objection, if it be one, Mr. Haycraft, is overruled. You may go ahead.

by Mr. Weisman:

Q. Answer the question. A. The cutting charge represents at least 10 per cent. additional, or 10 per cent. of the price of the merchandise whenever the textile firm must cut less than 15 yards of material. Due to the fact that they are all wholesale houses engaged for years in the sale of pieces of material in quantity lots, and that the attempt on the part of the purchaser not to hold any liability or risk of any type or to narrow that down to the point when he ordered exactly the yards required to make a garment throughout the day as the garment orders came in, without the loss of a yard, cutting charges were established.

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This attempt of the manufacturer to secure these small pieces was made after the fixing of a price on the basis of buying quantity. In other words, the garment man says, "I have sampled this material and I like it, and I am going to buy a lot of it if I can get a run, and I want to talk price."

After competitive prices are given and a firm gets it on the lowest bid, and after giving this price, the garment manufacturer comes in and he wants a number of cuts which have to be put through the same amount of work as bookkeeping, paying factors, and delivery charges, and they find that this is a very disastrous procedure, and the firms found that the trouble with an arbitrary charge, or service charge, is that after they have set up an arbitrary service charge to take care of this additional ex-

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pense, and it really does not take care of it, that the other firms in the industry, one of them, at least, will in a desire to get the business, say, "If you will switch over to me maybe I will not charge you this cutting charge." And it broke down the practice to the point where all of the firms simply let it go.

983 We recognize that this service charge represents at least 20 per cent. to 25 per cent., and we charge a man—a man can always buy 15 yards or more, which is the minimum quantity, without any additional charge, but if we must cut 2-6/8 yards and be cutting that all day long, we feel, after having established a price for the material on the basis of quantity, the lowest price that we can consistently give, and in addition to that we have to cut this yardage in these small lengths, we feel that we should have at least a minimum of 10 per cent. on this basis of small cuts below 15 yards, and that is the basis—when I say "we," I mean the manufacturers—and that is the basis on which the cutting charge is sought to be sustained. I can go into it in considerable detail, but I suppose you want just a brief summary of it, and that is what I have given.

Mr. Haycraft: I move to strike the answer out as not responsive, and—

Mr. Weisman: I submit it is quite responsive.

984 Mr. Haycraft: Will you please not interrupt me when I am trying to make a statement to the Examiner? It is very rude.

Mr. Weisman: I thought you had finished. I am sorry.

Mr. Haycraft: The answer is not responsive, and he went into a defense of the—

Mr. Weisman: It is just an explanation, if your Honor please.

Mr. Haycraft: I insist, Mr. Examiner, that I be permitted to make a statement to you without being constantly interrupted by counsel.

Mr. Weisman: I am sorry. I thought you had finally finished.

Mr. Haycraft: You knew I had not. I insist, Mr. Examiner, it is a part of the defense and I will be deprived of the opportunity of cross-examining this witness on these various questions because he is bringing in here apparently as a part of his attempted cross-examination a really definite part of his defense, and that deprives counsel for the Commission of the right of cross-examination when this is a matter of defense.

Mr. Weisman: I will concede that you can examine him when I am finished as long as you want to.

986

Mr. Haycraft: All right, then make him your witness and we will go ahead on that basis.

Mr. Weisman: No. That is obviously unfair. You called this man as a witness for the Federal Trade Commission and put him on as a part of your case. You brought out all of this testimony to attempt to sustain the charges that you have made against the respondents, and I submit that I am entitled to illuminate the record properly as to just what the situation is in that regard.

Mr. Haycraft: This is not an illumination of the record, but it is simply to show why, it is an attempt to present a justification and why they should be paid this cutting charge. This is a matter of defense. I move to strike the answer out, and let the witness be required to make an answer which is responsive to the question.

987

Mr. Goldwater: Before your Honor rules, I would like to state that as attorney for this witness I do not have the slightest objection to Mr. Haycraft going into the subject-matter of this examination on further redirect examination as far as he desires.

Mr. Haycraft: I want to do that at the proper time. I have at least twenty-five or thirty witnesses to present to-day and during the course of this week, and there is apparently an attempt made in the cross-examination to drag out the testimony of this witness so that I will not be enabled to do so.

Mr. Weisman: I object to that as entirely improper, unjustified, and without any foundation whatsoever. It may be what Mr. Haycraft will try to do when he has the opportunity to do so, but it is certainly not a part of the tactics of the respondents' counsel in this case. I do think we have the right of proper cross-examination, and I do not think that a cloud should be attempted to be thrown over it by counsel for the Commission in this way, which I conceive to be highly improper.

Examiner Bennett: The rest of the argument will be off the record.

(There was a discussion off the record.)

Examiner Bennett: Back on the record. Read the answer as given by the witness.

(Answer was read.)

Examiner Bennett: Beginning with the phrase "Due to the fact," the remainder of the answer will be stricken. Proceed.

By Mr. Weisman.

Q. These textile houses which are engaged—I will withdraw that. These textile houses, are they engaged in the business of selling cuts or pieces of merchandise? A. They are intended to be in the business of selling whole-sale pieces.

Q. How many yards to a piece? A. Depending upon the fabric; most of the fabrics are in lengths of 70 yards.

Q. When the price of fabric to the dress goods manufacturer—to the dress manufacturer, the man who makes

up the dresses, is figured by the wholesale house, is it figured on the basis of a purchase of a certain number of pieces of fabric, or on the basis of a certain number of so-called particular cuts or particular yardage?

Mr. Haycraft: I object to the question as not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. How do manufacturers figure—I will withdraw that. How do the wholesale textile people figure their prices in submitting it to the dress manufacturers, if you know?

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Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I at this point wish to state if I were permitted to pursue this inquiry and I make this offer and tender of proof that the witness would have testified that the textile manufacturer in submitting a fixed price to the dress manufacturer fixes such price on the basis of the purchase by the dress manufacturer of the entire piece or numbers of pieces.

Mr. Haycraft: I move to strike that out as entirely improper and having no place in the record at this point. I again state to your Honor that this is obviously a part of the defense of this case.

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Mr. Weisman: I certainly do object to such a statement as that. I have always had the opportunity heretofore of making an offer of proof, and I think that I have it now.

Mr. Haycraft: Please do not interrupt me continually when I am trying to make a statement to the Examiner.

Mr. Weisman: I thought you had made it and finished.

Mr. Haycraft: I had not. Your continuation of that practice, in my opinion, is entirely rude.

Mr. Weisman: Excuse me. I apologize. I had no intention of being rude whatsoever.

Mr. Haycraft: When the Examiner has made a ruling of this kind and when counsel is allowed to put in the evidence by his statement of an offer to prove, I think it is entirely improper, and I think it should not be allowed, and that the Examiner should not be disregarded in such a manner. It seems to me that this is entirely irregular, and it is unnecessarily so because he will be given an opportunity to prove the facts in support of his defense as far as he desires when he comes to his case. I am not trying to deprive him from the opportunity of putting anything that is proper in evidence. There is nothing here that will have that effect. He is not being deprived of anything to which he has a proper right. I think it is untimely, and it serves only the purpose of cumbering and beclouding the record at this point.

Mr. Weisman: I certainly think you are wrong there. I object to that most strenuously. I think that I am in any court in this land entitled to make an offer to prove. We are not before a jury here and you know it.

Examiner Bennett: There will be no further objection-argument made. The argument that is made is sufficient for me to make a ruling.

The offer to prove stands. The motion to strike it from the record is denied.

By Mr. Weisman:

Q. Does this cutting charge refer to a practice which had grown up among the dress manufacturers of obtaining from the textile people a price on the basis of the piece in its entirety, and then attempting to or getting from the manufacturer of the textile a particular cut only sufficient to make up a few dresses and attempt to pay him for the cut at the same price per yard as had been quoted for the entire piece? A. Yes.

Mr. Haycraft: I object.

Examiner Bennett: Objection sustained.

Mr. Weisman: I make this offer to prove. If the witness had been permitted to answer he would have answered in the affirmative. I will try to make the offer as brief as is possible with clarity.

998

Examiner Bennett: I am going to sustain objection to everything that was covered by the witness in his statement after the place I have stricken it out.

You are simply trying to get in in another way the thing that the Examiner has already ruled out, and that is not legitimate practice.

Mr. Weisman: May your Honor please, I had no such intention.

Examiner Bennett: This is a practice that we are not particularly fond of. If you want to pursue that, you will not find that it will help you very much. I think when a ruling is made that the attorney should pay some attention to it. I think he should pay some respect to the ruling. You are not deprived of any rights. You have your whole defense to make and all of that can go in on your defense at the proper time.

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On the other hand, I am willing to have you take up these documents and if he can explain them he

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Austin M. De Lasser—For Commission—Cross.

may do so. But I will not permit him to give a lecture of five to ten minutes on every term, giving the history and everything else about it. That is not a fair cross-examination. We will get along better if you will pay attention to the Examiner's ruling, I am quite certain.

1001

Mr. Weisman: Of course, your Honor, I believe you must be quite cognizant of the great respect in which I hold the Court. I desire to call your Honor's attention to the fact, however, that we poor lawyers practicing for our clients' interests are frequently met in the Appellate Court with the statement, "Well, counsellor, why didn't you protect your record?"

1002

If, in my endeavor to protect the record, I run counter to your Honor's ruling I wish it would appear on the record that such running counter to your Honor's ruling is because of no lack of respect of the Court or lack of respect of the Court's erudition and knowledge of the subject-matter, but merely because of my own poor lack of knowledge and belief that it is honestly necessary for me in this court to make my record and protect my clients' record so that if this case should go to the Circuit Court of Appeals, I will be in a position where I will not be met with the question, "Well, counsellor, you should have done so and so." I admit most frankly and honestly that this is a very difficult problem that presents itself to any lawyer who tries fairly to try his case. He does want to accede to the Court's ruling and to his duty to his client and to the questions which he knows, from experience, he will be confronted with when the case reaches the Circuit Court of Appeals, if it should do so.

Examiner Bennett: I think the matter is clear. You may proceed.

By Mr. Weisman.

Q. There has been some testimony here about "uniform discounts." Without giving us any of the argument of the reasons about it, will you please explain to the Court what is meant by "uniform discounts," at least so far as you understand it?

Mr. Haycraft: I would like to have it pointed out in the record in the direct testimony where any reference was made to uniform discount. I do not want to object, but I am not familiar sufficiently with the record, apparently, to know where it is.

Examiner Bennett: I will overrule your objection, if that is what you are making, and let the witness answer.

1004

A. Uniform discount is the adoption of certain terms by certain trades upon certain materials. If it happens to be velvet, for instance, it would be 2 per cent. fifteen days, or net seventy days, as being stated by the majority of the velvet houses as a good uniform term to maintain.

Or, it may be for silk, 6 per cent. for ten days, sixty days net, or 8 per cent.—S E.O.M.; in the case they are considered by the trade in general to be a good uniform term to maintain. So, I can go into the category of all of these materials as to what is considered a good uniform discount.

1005

By Mr. Weisman.

Q. Is the effort of the Textile Division to maintain that uniform discount to all purchasers? A. It was our direct intention to maintain those uniform discounts.

Q. Do you know what brought about the necessity of the effort for such maintenance?

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

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*Austin M. De Lasser—For Commission—Cross.**By Mr. Weisman.*

Q. One of the other matters that the Textile Guild addresses itself to was what you describe as "subsidized advertising." A. Yes.

Q. Will you explain to the Court what is meant by "subsidized advertising"? A. Subsidized advertising was co-operative advertising as is referred to, but in short quite often means an attempt on the part of the purchaser to get an allowance of money after he has made his purchase in order, in his claim to help him pay for his advertising which resulted only in a beating down of the price under another type of reason or excuse. It is not the direct advertising of a textile firm, but it is the contributing of money to another firm to pay for his advertising, supposed to be for the promoting of the other firm's material, but really to secure a reduction in the price of the goods which are purchased from that firm rather than to promote the sale of those goods.

Mr. Haycraft: I move to strike that part of the answer beginning with "promote."

Examiner Bennett: The answer will be stricken beginning with the words "which resulted only in the beating down of the price."

Mr. Weisman: Exception.

By Mr. Weisman.

1008

Q. You referred to "return regulations"; will you explain to us what that term refers to or just exactly what that term means? A. The returns regulation is incorporated—

Q. Do not tell us where it was incorporated but tell us what it was. A. It prevents—

Q. Do not tell us what it does or Mr. Haycraft will move to strike it out, but tell us what the return regula-

tion is; what returns were and under what circumstances they were made. A. I am afraid I do not understand the question.

Q. Well, I will try to reframe it. You stated that one of the matters the Textile Guild members addressed themselves to was returns regulations. A. Yes.

Q. Tell us what returns were; what is sought to be regulated? A. We sought to regulate the return of material after an unwarranted length of time and for no reason on the part of the person returning, or wishing to return other than, having overpurchased, now wishing to not carry the loss themselves.

Mr. Weisman: All right. That is fine.

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(There was a discussion off the record.)

By Mr. Weisman:

Q. My friend Mr. Haycraft just stated in answer to the statement "Not if it is discriminatory." Were any of these practices with regard to the return regulations, subsidized advertising, uniform discounts, or cutting charges; were they generally applied with all people that you did business with, or were they discriminatory and in effect only to some and not to others?

Mr. Haycraft: I object. That was off the record.

Mr. Weisman: I know it, but I am putting it on the record.

1011

Examiner Bennett: What is the question?

(Question read.)

Examiner Bennett: Overruled.

A. It was not discriminatory, and it applied to all accounts with whom we dealt.

(There was a discussion off the record.)

Mr. Weisman: It is now conceded that they were not illegal, and I take that concession on the record.

1012

Austin M. De Lisser—For Commission—Cross.

Mr. Haycraft: No. I do not say that.

Mr. Weisman: Didn't you just say that they were not illegal?

Mr. Haycraft: The advertising allowances were not.

Mr. Weisman: I thought you wanted to consent to an order of dismissal.

Mr. Haycraft: No.

Mr. Weisman: You really should have.

Mr. Haycraft: Certainly not.

By Mr. Weisman.

1013

Q. Prior to the formation of the Textile Guild, do you know whether or not in the silk business there was generally, by all manufacturers, an effort to guard the copying of designs, of registered designs?

Mr. Haycraft: I object as not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: I desire now to offer to prove that if the witness were permitted to answer, the witness would have answered in the affirmative.

Examiner Bennett: That offer will be received for the record.

Proceed.

1014 *By Mr. Weisman.*

Q. On your direct examination, you testified that in connection with an effort to—I withdraw that. On your direct examination you testified that on certain occasions accountants were sent in to examine the books of the members of the Textile Division. A. Yes.

Q. Is that so? A. Yes.

Q. Did the Textile Division maintain a regular staff of accountants? A. No.

Q. Were these examinations sporadic and far apart and only in cases where some claim had been made that there was a violation? A. They were far apart and sporadic, in fact we only had—we only sent an accountant at one time, not because of a claim against the firm, simply as a check-up.

Q. What is that? A. They were far apart and sporadic, as I said before; as a matter of fact, we only had one occasion of that kind. We only sent accountants at one time. And at that time it was not because of a claim made against that firm, but simply was more or less of a check-up.

Q. Now, when you obtained notice or information—I withdraw that. When you obtained information which in your opinion put you on notice that there has been, or caused you reasonably to believe there had been a violation of those four matters that you have enumerated—to-wit: First, the return regulation; second, the subsidizing of advertising; thirdly, the uniform discount; fourthly and lastly, a violation of cutting charges. Did you on behalf of the Textile Division thereupon initiate your own dependent examination with regard thereto? A. I always do the initiating of my own examination.

Q. Did you initiate such—I withdraw that. Did you in connection with such examinations or examination come to your judgment independently of the Fashion Originators' Guild, or any direction by it? A. I come to my decision entirely independently on the first or preliminary examination before the Grievance Committee sits, yes.

Q. Is this Grievance Committee wholly from the Textile Division on this claim? A. Well, from their own members.

Q. When you ascertain in your opinion, or in the opinion of the Grievance Committee, I should say, that there has been some violation of these rules of fair trade—or these fair trade practices, I take it you then notify the members of the Textile Guild? A. Yes, we do.

1018

Austin M. De Lisser—For Commission—Cross.

Q. That merely takes the form of a notification? A. All in that case.

Q. After you notify them is there anything further that you do about it? A. There is nothing beyond that point.

1019

Q. So that, as a matter of fact, all the Textile Affiliates do in the extreme operation is to notify the members of those manufacturers who, in their opinion are engaged in unfair trade practices with relation to the textile manufacturers; is that so? A. Mr. Counsel, I think I may be a little mixed up about your "manufacturers"; once or twice you referred to textile or garment manufacturers. I think you have been referring to textile manufacturers all the way through, and now I think you have been referring to garment manufacturers and to textile manufacturers.

Q. I meant to make that clear. I was referring to textile manufacturers. A. Now, you are referring to a garment manufacturer?

Q. Well, I will reframe the question so as to clarify that. I will see if I can clarify it so that you can understand it. A. All right.

Q. The Textile Guild imposes no fine beyond its own members, does it? A. On its textile members?

Q. Yes. A. It has imposed fines in accordance with the penalty clause on its own members.

1020

Q. To what extent? A. The extent as outlined in the penalty, which happens to be—it happens it has never been over \$100.

Q. Have you got—I withdraw that. With regard to this notice, what is the form that the notice takes? A. Regarding the textile people who have violated their own rules?

Q. Yes. A. There is no notice that goes out on that, but simply at the next membership meeting we usually tell the membership that a certain firm had been before the Grievance Committee.

Q. Let me see. Assuming that you notify your membership that the dress manufacturers engaged in these unfair

practices that you have enumerated, four in number, that certain dress manufacturer is engaged in certain of those fair practices? A. Yes.

Q. Assuming further that certain of your silk or textile manufacturers receive such notice, are they privileged, if they desire to do so, to continue to do business with such dress manufacturers? A. They are not expected to, but they are privileged to.

Mr. Weisman: I ask that the first part of it be stricken out.

Mr. Haycraft: I object to that being stricken out.

Examiner Bennett: Let it stand.

Mr. Weisman.

Q. Is there among your rules or regulations any sanction or authority in such cases to fine the textile member? There is no such provision.

Q. Then, I take it there is no such authority? A. There is no such authority.

Mr. Weisman: May I see Commission's Exhibit No. 406.

Mr. Weisman.

Q. I also take it that the four trade practices, or, rather, four denominated unfair trade practices are the sole matters to which your Textile Affiliates addressed themselves? A. In the matter of so-called fair trade practices?

Q. Yes. A. They are the only four.

Q. Yes.

Mr. De Lisser, from your experience and knowledge of the industry—when I say "industry" I am referring to the textile industry—would you say that the adoption by the Textile Affiliates of these fair trade practices had generally aided the industry?

1024

Austin M. De Lisser—For Commission—Cross.

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Mr. Weisman: I assume that the objection is not to the form of the question but to the fact your Honor thinks it is a part of the—

Examiner Bennett: Yes, I think it is wholly irrelevant.

Mr. Weisman: I do not want to pursue it; if it is a question of form I would have reframed it, but since it is not, I will not reframe it.

Examiner Bennett: No, not to the form.

1025

By Mr. Weisman.

Q. These fair trade practices were adopted in or about the early part of 1935, were they not? A. I have already said that they had their inception about November, 1934, the starting of it.

Q. Do you know whether or not these fair trade practices were approved by the National Recovery Administration?

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. At the time of their adoption?

1026

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I assume the same reason, your Honor? I do not want to pursue this inquiry further unless—

Examiner Bennett: It is not a matter of form; I think it is irrelevant.

Mr. Weisman: I wish to state that if the Court had permitted the answer to that question I would have proved that these fair trade practices were

approved by the National Recovery Administration, after submission to the industry generally and to all affiliated or kindred or associated branches of the industry having an interest therein.

By Mr. Weisman.

Q. I see that in Commission's Exhibit No. 246-0 this resolution appears: "that no cuts shall be made of strips of levers lace edges or flouncings. Nets and all overlaces may be cut, but such cuts must carry a minimum 10 per cent. surcharge. Trimming laces may be cut at seller's option, but in such event must carry the same surcharge."

Will you tell me the circumstances and facts which led to the passage of that resolution, if you can?

1028

Mr. Haycraft: Objected to.

Mr. Weisman: I submit I can always show what is behind, what is the circumstance.

Examiner Bennett: I am going to let him answer.

By Mr. Weisman.

Q. You may answer.

Examiner Bennett: Make it short.

By Mr. Weisman.

Q. Make your answer short.

1029

Examiner Bennett: Not long drawn out.

A. This is nothing more than exactly the same thing that the other cutting charge is; it is a cutting charge applicable to the lace business, and made up simply with an understanding which I would have to explain of the lace business, for the same purpose and in the same way that the cutting charge is on the other.

1030

*Austin M. De Lisser—For Commission—Cross.**By Mr. Weisman.*

Q. The same thing applied to this? A. Applicable to this.

Q. As to the other? A. That is right, yes.

Q. I show you in Commission's Exhibit 246-P a discussion concerning this 10 per cent. charge, and it says: "If there are still accounts which have failed to pay the overdue 10 per cent. charges, the accounts be turned over to Mr."—blank, the attorney's name, I prefer not to read it—"who will institute collection for all houses at the same time against the one account."

1031

Do I understand, then, that if this 10 per cent. cutting charge was not paid the Textile Guild merely instituted suit in a regular court of law for its members to collect this charge?

Mr. Haycraft: Objected to; the document speaks for itself.

Mr. Weisman: I am asking now generally whether that was the practice.

Examiner Bennett: Oh, he may answer.

By Mr. Weisman.

Q. The Court says you may answer.

Examiner Bennett: What the practice was.

1932

A. That was not a practice. That was a discussion. It never happened to reach any concrete basis.

By Mr. Weisman.

Q. In other words, you never even sued? A. No, except individually a firm.

Q. I see. A. Nothing to do with the textile group.

Q. I see.

There has been admitted into evidence here as Commission's Exhibit No. 283 this advertising (indicating). Will you tell us where that advertisement appeared? A. That appeared in "Women's Wear."

Q. What is "Women's Wear"? A. That is a recognized trade paper for the textile firms, the dress manufacturers and retailers.

Q. And generally received by them? A. Generally received by all textile firms.

Q. So, in other words, this ad was open and notorious and went to all members in the industry or affiliated or associated with the industry?

Mr. Haycraft: Objected to as argumentative.

1034

Mr. Weisman: You put in a paper and nobody knows what it is all about. I am showing what it is.

Mr. Haycraft: I object to the form.

Examiner Bennett: I will sustain the objection to that question, the form; it is merely argumentative.

Mr. Weisman: May I have the question?

(Question read.)

Examiner Bennett: He has already given the facts; there is no doubt about it.

By Mr. Weisman:

Q. Well, does this paper, to your knowledge, have general circulation among all of the—

1035

Examiner Bennett: He has already answered it.

Mr. Weisman: Well, I did not take it that—

Examiner Bennett: He has already answered the question.

By Mr. Weisman:

Q. Is the same true of Commission's Exhibit No. 284?

A. It is in the same paper with the same scope.

1036

Austin M. De Lissac—For Commission—Cross.

Q. I show you Commission's Exhibit No. 250 and ask you whether you remember when that form came in general use, or when you promulgated or sent that form out?

A. We promulgated and sent it out just about January 1, 1936. May I recollect again on that—

Q. I show you—

Mr. Goldwater: Did you say 1936?

The Witness: Well, I—

By Mr. Weisman.

1037

Q. I show you this exhibit, Respondents' Exhibit 1 for Identification, and ask you with regard to the relation of the time, whether or not this came into general use after you had seen and received Respondents' Exhibit for Identification 1? A. Oh, certainly, we discussed this exhibit here before we agreed to go ahead with the pledge.

Q. I see.

Mr. Haycraft: Off the record.

(There was a discussion off the record.)

Mr. Haycraft: I move to strike the last question and answer, Mr. Examiner, referring to an exhibit not in evidence.

Mr. Weisman: Wait a moment, I merely refreshed his recollection in point of time.

1038

Mr. Haycraft: Then there is no probative value of the testimony; he says this and that, this and that, and this and that.

Examiner Bennett: All right, it may be stricken.

By Mr. Weisman.

Q. I show you Respondents' Exhibit 1 for Identification, and ask you whether or not you have ever seen that before?

Mr. Haycraft: That is objected to: not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I now wish to make this offer of proof, that if the witness had been permitted to answer, he would have said yes; further, that I would have then inquired—

Examiner Bennett: The matter has already been passed upon as irrelevant, and I don't see why you should consider that an irrelevant document proves anything.

Mr. Weisman: Well, I think now this has been offered in evidence. Now, I wish to show by cross-examination that the adoption of the use of this document was because of receipt by the respondent of this letter from the Federal Trade Commission.

1040

Examiner Bennett: Yes, but you can do that on defense.

Mr. Weisman: The Court has ruled that I may do that on defense.

May I have an exception?

Examiner Bennett: Yes, you may have an exception.

Mr. Weisman: That is all.

Mr. Haycraft: I have about two questions, Mr. Examiner.

Mr. Weisman: Wait just a moment, I think I have something. Oh, yes. I would like to have Respondents' Exhibits 2 and 3 for Identification.

1041

(Reporter hands exhibits mentioned to counsel.)

Mr. Weisman: May I speak to the Court off the record?

Examiner Bennett: Yes, surely.

(There was a discussion off the record.)

Mr. Weisman: That is all.

1042 . Austin M. De Lisser—For Commission—Redirect.

Redirect examination by Mr. Haycraft.

Q. Mr. De Lisser, you were questioned Friday on cross-examination with respect to your letter of January 27 to Mr. Grossleight, Commission's Exhibit 245, and in your answer to questions propounded to you by counsel you said that Mr. Grossleight requested the Textile Executive Secretary, that is yourself, to appoint a committee, that he would approve; in fact a committee that he would provide of his own choice to sit and hear a disclosure of the misunderstandings between himself and the firm of Doucet, and to act more or less as an informal arbitration committee, and so forth. Page 403 of the record.

1043

Mr. Weisman: Well, wait a moment. Let me follow you. (Referring to record) Yes.

By Mr. Haycraft.

Q. Now, I want to know just how you came to be interested in this misunderstanding or controversy between Doucet and Grossleight? A. That was because I—I thought I had explained that the screen printers, including the United Textile Print Works, wanted to form their own group, at that time, and be affiliated with our textile members; they thought that difficulties arising in trade practice, and others between the screen printers that members deal with, and our members, could be ironed out if they had a little group affiliated where such things could be discussed, and that was the time we were talking affiliations, so that when a difficulty definitely arose between Doucet and members of our group, and the United Textile Print Works, it immediately came to my attention, simply because—

1044

Q. Who brought it to your attention? A. I can't tell you who first did. I talked to both sides quite a bit, because both sides submitted it, due to the fact that it was

very evident the screen-printers wanted to affiliate with us, and wanted to iron out their troubles in our organization. A thing like that had not come up previous, or since.

Q. As a matter of fact, was it the Doucet firm that first apprised you of the controversy and asked you for assistance?

Mr. Weisman: I object to this. This is the Commission's witness, and a question stating "As a matter of fact" is not proper. It is argumentative in form. His own witness; he has testified he does not remember; now Mr. Haycraft is arguing with him, with his own witness, and asking him "As a matter of fact didn't this and that happen."

Mr. Haycraft: Why the emphasis on your own witness? 1046

Mr. Weisman: He is your—

Mr. Haycraft: The record shows he is a respondent in this proceeding.

Mr. Weisman: No, he is not.

Mr. Haycraft: Certainly he is.

Mr. Weisman: No, he is not.

Mr. Haycraft: Yes, he is.

Mr. Weisman: I do not see his name mentioned.

Mr. Haycraft: It is in there.

Mr. Goldwater: Yes, it is; he is a party.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Overruled. You may answer. 1047

A. I have already said that I don't recall which firm came to me first; there were too many discussions at that time, almost daily.

By Mr. Haycraft.

Q. You refer in your cross-examination to the instances where you sent notices to the members of the textile group,

1048

Austin M. De Lisser--For Commission--Redirect.

of instances of the violation of textile group rules by garment manufacturers, cutting charges, copying, and so on?

A. Right.

Q. And I believe you testified that you had given these garment manufacturers, or their representatives, an opportunity to state their side of the case? A. Right.

Q. Was that by word of mouth or in writing? A. That depends upon the case. It has been both ways, and has been referred to previously. The thing evolved, as we got under way, got to a more concrete basis. At times, it has been by word of mouth only, where I have gone and talked to them; at times it has been letters.

1049

Q. Now, would it be possible for you to find the letters that you had written to these garment manufacturers, if you looked in your files? A. I believe so.

Q. I would be glad to have you make a search and see if you can find any correspondence which you had with garment manufacturers you have named in your testimony on this point. A. (Witness makes note.)

Q. Now, in those instances where you had oral conversation with either the garment manufacturer or his representative, did you tell him what use you were going to make of the information that they gave you with respect to the textile manufacturers? A. I don't know what you mean by "use."

1050

Q. Well, that you would give notice to the textile manufacturers if they declined to obey or live up to the rules?

A. He was told that these textile manufacturers would know of his attitude.

Q. Then what were the circumstances under which he came in line and agreed to abide by those rules and regulations? A. Well, that usually occurs because I have found that every textile firm is friendly with certain garment manufacturers. It may be that when Cheney was friendly with this one and somebody with the other one, as might happen, that these forty-five, or so, textile firms, know of

a certain condition, of a certain guarantee made among them, there are always some who are particularly friendly, and they always go over to that man and say, "What is the matter? I am surprised to hear this, am surprised to hear that, and is it good business to deal with a fellow that does this type of thing? Why do you do it?" It must be because of the fact that somebody in there, or member, that goes and settles with that man, always has resulted in that man clearing up any misunderstanding that occurred.

Q. In other words, he then agrees to abide by the rules and pays the charge, or does whatever is necessary? A. He doesn't agree to abide by the rule, but he—

Mr. Goldwater: I object to that question. That question is not only argumentative, but it is suggestive of an answer. 1052

Mr. Haycraft: Certainly it is suggestive of an answer. This is a respondent in the proceeding. I am going to have a few privileges.

Mr. Goldwater: No use of yelling about it, Mr. Haycraft.

Examiner Bennett: Certainly, let the gentleman make his statement. Go ahead.

Mr. Goldwater: I object to the form of the question on the ground it is improper to suggest an answer to a witness on redirect. This is all cross-examination, and the suggestion made is not in line with the witness' previous testimony, and is, therefore, argumentative. 1053

Mr. Haycraft: Mr. Examiner, it is in line, merely a summary of his previous testimony.

Mr. Goldwater: Then I object on the ground it is a summary. Certainly that is not a proper form of question, if it is a summary.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I sustain the objection; it does not seem to add to anything.

1054 *A. M. De Lisser—For Commission—Redirect—Recross.*

Mr. Haycraft: That is all.

Mr. Goldwater: That is all.

Mr. Haycraft: Subject to recall, of course, upon finding this correspondence that I have requested a moment ago.

The Witness: Yes, I have made a note of it.

Examiner Bennett: That is all.

Mr. Goldwater: May I ask one more question of Mr. De Lisser, Mr. Examiner?

Examiner Bennett: Yes, all right.

Recross-examination by Mr. Goldwater.

1055

Q. Mr. De Lisser, reference has been made by the introduction of one exhibit, the number of which I do not now recall, to the Embroidery Group. Do you recall such an exhibit? A. I believe it is in the minutes.

Q. In the minutes? A. Yes.

Q. That was about the minutes of one meeting of the Embroidery Group, if I recall correctly. A. That is right.

Q. Is that correct?

Mr. Haycraft: Commission's Exhibit 246, I think.

Mr. Goldwater: Because I don't recall which exhibit it was.

1056

By Mr. Goldwater.

Q: Is the Embroidery Group a separate group of manufacturers, or are they members of Textile Affiliates? A. Oh, they are regular members of Textile Affiliates; they just have a more direct interest in embroidery.

Q. That is, they are Textile Affiliates? A. Yes.

Q. Who have a primary interest in embroidery, rather than other textiles? A. That is right.

Q. Have they separate rules, or separate regulations, or separate resolutions? A. No, only where it would be practi-

*Austin M. De Lisser—For Commission—Recross.
Ben B. Hirsch—For Commission—Direct.*

1057

tial, like lace cut charge; I mean applicable to that particular material. They have always been one with our Textile Group, but there are rules which might be applicable to laces or velvets or embroidery, which would alter in accordance with the section it was applicable to, and are adjusted in that way.

Q. Such as you explained before? A. Yes.

Q. In the matter of discounts or cutting charge? A. Yes; right.

Q. And pertaining to one type of material as against another? A. That is right.

Mr. Goldwater: That is all.

1058

Mr. Haycraft: No further questions.

Examiner Bennett: All right.

(Witness excused.)

Examiner Bennett: What is your further pleasure?

Mr. Martin: At this time, your Honor, we would like to call Mr. Hirsch.

BEN B. HIRSCH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name, please?

The Witness: Ben B. Hirsch.

Examiner Bennett: Where do you reside, Mr. Hirsch? 1059

The Witness: 317 West 89th Street, New York City.

Direct examination by Mr. Martin.

Q. Mr. Hirsch, please state your name, residence and occupation. A. Ben B. Hirsch, H-i-r-s-c-h, 317 West 89th Street.

1060

Ben B. Hirsch—For Commission—Direct.

Examiner Bennett: Talk louder, please.

The Witness: Yes, sir; Ben B. Hirsch, 317 West 89th Street.

By Mr. Martin.

Q. What is your occupation? A. President treasurer of the Melba Dress Company, Inc., of 1375 Broadway, New York City.

Q. How long have you been connected with the Melba Dress Company, Mr. Hirsch? A. Since its inception in 1928.

1061 Q. What business is the Melba Dress Company engaged in? A. In the manufacturing of women's dresses.

Q. What priced dresses do you manufacture? A. \$6.75 wholesale.

Q. That is the wholesale price? A. Yes, sir.

Q. Are you a member of the Fashion Originators Guild of America? A. No, sir.

Q. Are you in an way affiliated with that organization? A. No, sir.

Q. Where do you sell the dresses that you manufacture, Mr. Hirsch? A. You mean, which customers? Where are they located?

Q. I mean, what is your outlet; what type of customer?

A. The majority are retail customers and department stores throughout the United States, and some foreign.

1062 Q. In the selling of dresses, do the orders which you receive for your products contain any statement on them to the effect they are subject to return if they are deemed copies?

Mr. Weisman: I object; the best evidence of that is the order.

Examiner Bennett: Well, now—

Mr. Martin: What does your Honor say? I could not hear your Honor's ruling.

Examiner Bennett: It is sustained. There is better evidence of that, of course.

By Mr. Martin.

Q. Have you any copies of orders for dresses? A. Yes, sir; but not with me.

Q. Have you them with you? A. No, sir.

Q. Have you any with you? A. No, sir.

Q. Can you produce them? A. No, sir.

Q. In the course and conduct of your business do you receive any returns of your dresses? A. Yes, sir.

Mr. Weisman: I object to that as immaterial; calling for a conclusion of the witness. How does he know why a man in Oshkosh or Duluth, or some other place—

1064

Examiner Bennett: Overruled. He ought to know.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Go ahead and answer the question. A. We receive them for various reasons, some may be for—

Mr. Weisman: Now, I object to any further answer. He has answered. The answer is "For various reasons."

1065

By Mr. Martin.

Q. All right, sir. What are some of the various reasons, Mr. Hirsch?

Mr. Goldwater: I object on the ground that whatever reasons may now be offered for the return are reasons stated by other persons, and therefore this witness' testimony with respect thereto would be merely hearsay.

1066

Ben B. Hirsch—For Commission—Direct.

Examiner Bennett: Overruled.

Mr. Goldwater: Exception.

Examiner Bennett: It is very obvious that a man in the line of business that he has been for a number of years knows the reasons why his goods are returned, as well as other things connected with his business. If a man does not, why, he is a good deal of a chump.

By Mr. Martin.

Q. Go ahead and answer the question.

1067

Mr. Goldwater: Exception.

A. It might be late deliveries, imperfections in materials, and cancellations that we may have gotten in before. Very little is received back to-day on account of an alleged copy of the Guild, although we did suffer quite a good deal with that—

Mr. Weisman: I ask that that be stricken out.

Mr. Martin: Let him finish.

The Witness: In the past few—

Mr. Weisman: I object.

Mr. Martin: Let the witness finish his answer.

Mr. Weisman: I don't like it in the record.

Mr. Martin: It can be stricken if it is improper.

1068

Sit down, now, and let him answer the question.

Examiner Bennett: Go ahead.

Mr. Weisman: Really, Judge, this is quite—

Examiner Bennett: Finish your answer.

Read the answer.

(Last answer read.)

A. (Continuing) Those are primary reasons for the returns.

Mr. Goldwater: I ask so much of the answer be stricken out that states he did suffer quite a good deal with them in the past, as being indefinite, too general, and not responsive to the question, and a conclusion.

Examiner Bennett: Overruled.

Mr. Goldwater: Exception.

By Mr. Martin.

Q. Now, in the fall of 1935, did you have any request from customers that they be afforded the right to return garments if they were deemed copies of garments registered with the Fashion Originators Guild?

1070

Mr. Weisman: Just a moment, Mr. Hirsch.

The Witness: Yes, sir; I shall wait.

Mr. Weisman: I object to the form of the question as being improper, calling for a statement of some other witness; furthermore, I would ask your Honor to advise counsel to cease leading the witness. Obviously, this is not a respondent. This is not one of our men. It was brought out he was not a member of the Guild. I think it is wrong, and I object to the leading, and; furthermore, I object to the question as improper in form.

Mr. Martin: Your Honor please, I do not agree with my friend that that is a leading question. I asked him the direct question whether or not he had any request for the privilege of returning goods. I have not asked him to state what anybody told him. I have asked him to make his answer a "yes" or "no" answer.

1071

Mr. Weisman: Oh, no.

Mr. Martin: Did he or did he not have a request?

Mr. Weisman: Now, if you will read the question you will see that you did not ask what you

1072

Ben B. Hirsch—For Commission—Direct.

say to the Court you asked. You said did somebody ask him for the privilege of returning goods. Did somebody deem something a copy, and so on, ad nauseum. I say if you asked him whether he got requests to be privileged to return merchandise, that is one thing, then he is testifying to the fact of the request being made. Now, you are asking him in your question not as to the fact but as to the substance of the request, which is purely hearsay.

Examiner Bennett: Overruled. You may answer. Mr. Weisman; May I have an exception?

1073

Examiner Bennett: Certainly, you have an exception to all adverse rulings.

A: We were offered orders by most of our accounts with the stamp on it warranting the right to return the merchandise if it was an alleged copy of a Guild dress.

Mr. Weisman: Now, I move that the answer be stricken out as being not responsive. It has a further vice, that your Honor has ruled that the best evidence of these orders is the orders themselves. Now, this answer is wrong in saying something that the Court has ruled is not competent, in this fashion.

Examiner Bennett: Will you please read the answer?

1074

(Answer read.)

Examiner Bennett: It is not the best evidence.

Mr. Weisman: What did the Court rule?

Examiner Bennett: I sustained the objection.

Mr. Weisman: Thank you.

Mr. Martin: Go ahead.

Mr. Weisman: And may the answer be stricken?

Examiner Bennett: Yes, it may be.

Ben B. Hirsch—For Commission—Direct.

1075

By Mr. Martin:

Q: Referring to Commission's Exhibit 3-A, Mr. Hirsch, I will ask you to read the last paragraph and refresh your memory by reading that paragraph of that exhibit.

(Witness refers to paper.)

A: Yes, sir.

Q. Have you ever received any orders containing that provision?

Mr. Weisman: I object to that. The best evidence is the order itself. Your Honor has ruled that he should produce the orders. As a matter of fact, he has stipulated he would bring them back after lunch, he said this afternoon. Now, we are still on this question, seeking to get this matter in indirectly which your Honor has ruled on my objection should only be produced directly.

1076

Examiner Bennett: Yes, I think you better get the documents. It is subject to the objection which was made to it, undoubtedly.

Mr. Martin: Your Honor please, at this time it is 12.30. I would like to ask that we adjourn for lunch until 2 o'clock, during which time this witness will have an opportunity.

Examiner Bennett: Yes, all right, we will adjourn to 2 o'clock.

Mr. Weisman: Will your Honor also direct this witness to bring with him all of his orders since 1932?

1077

Examiner Bennett: No, I will not ask him to do anything that—

Mr. Weisman: May I examine him for a moment voir dire?

Mr. Martin: You can do that when it comes to your case.

1078

Ben B. Hirsch—For Commission—Direct:

Mr. Weisman: You are asking—

Mr. Martin: You can ask him when you get around to it.

Examiner Bennett: Your time will come later.

Mr. Martin: This is my turn now.

Examiner Bennett: As to the motion asking for certain papers, I am going to let the attorneys handle it; I am not going to say that you bring this in or that.

Mr. Weisman: Will your Honor permit me to obtain a subpoena duces tecum directing the witness to bring in certain papers that I require?

1079

Examiner Bennett: You can do that if you wish to, apply to the Commission for that.

Mr. Weisman: Then I will.

Examiner Bennett: You can apply to the Commission for such subpoena. The Commission is the only one that has authority to issue it; you will have to apply to the Commission formally.

Mr. Weisman: I want a subpoena issued—

Examiner Bennett: Will you waive the subpoena duces tecum?

Mr. Weisman: —as some of the others have.

Examiner Bennett: Just what do you want brought in?

1080

Mr. Weisman: I want the financial statements, the amount of business done during the year, all of the orders received by him, and everything that will generally illuminate his testimony and show to what extent he received orders such as this. I will give you the list of the papers, otherwise I shall apply forthwith and get a subpoena duces tecum.

(There was a discussion off the record.)

Examiner Bennett: We will recess until 2 o'clock.

(Whereupon, at 12.30 o'clock P. M., Daylight Savings Time, a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

Examiner Bennett: The hearing will come to order. Mr. Hirsch, will you come around and take the stand?

BEN B. HIRSCH was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows: 1082

Direct examination (continued) by Mr. Martin.

Q. Mr. Hirsch, you are appearing here pursuant to a subpoena issued against you, are you not? A. Yes, sir.

Q. Have you at this time a copy of the data that you were asked to bring? A. The boys left my place of business about twenty minutes ago—about twenty minutes of two, and came down by taxicab and they have not got here yet, but they will be here in a few minutes.

Q. Mr. Hirsch, when did you first become acquainted with the Fashion Originators Guild? A. Oh, that goes back—

1083

Mr. Weisman: Will you clarify that question, "became acquainted," I do not know what you mean by that.

By Mr. Martin.

Q. When did you first have knowledge of the organization known as the Fashion Originators Guild of America, Inc.?

1084

Ben B. Hirsch—For Commission—Direct.

Mr. Martin: Is that definite enough to suit you, Mr. Weisman?

Mr. Weisman: Yes; thank you.

A. That goes back, I think, to 1934; I think it would go back as far as the early part of 1934, or the latter part of 1933.

By Mr. Martin.

Q. How did you become acquainted with or familiar with this organization? A. About August, 1934, the N.R.A. had before it the matter in connection with the putting into a code of a restriction setting up a style-registration bureau, and from the information I ascertained at the time the Fashion Originators Guild as behind that, and the—

Mr. Weisman (interposing): I ask that that be stricken out.

Mr. Martin: We consent to that, your Honor.

Examiner Bennett: It may be stricken out.

By Mr. Martin.

Q. Are you familiar with the organization known as the Popular Priced Dress Manufacturers? A. Yes, sir. I am the president of that organization.

Q. President? A. Yes.

1086 Q. Did that organization, of which you have testified you are the president, file a complaint with the Federal Trade Commission against the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: I sustain the objection. We have not gone into those things under the rules of the Commission. The Commission is the complainant in this case.

Ben B. Hirsch—For Commission—Direct.

1087

Mr. Martin: If your Honor please, I understand that, but I wish to bring out the fact as to whether or not they requested any action on the part of the Commission.

Mr. Weisman: I object to that as immaterial and ask that the statement be stricken from the record. Suppose anybody asks for anything. That has no probative value in this record.

Examiner Bennett: It may be stricken.

By Mr. Martin.

Q. Are you familiar with the conduct of the business of the Melba Dress Company, Inc.? A. Yes, sir.

1088

Q. Did the Melba Dress Company ever sell any goods to the Palace Store, Kansas City, Mo.? A. Yes, sir.

Q. They did? A. Yes.

Mr. Martin: I ask that this be marked for identification as Commission's Exhibit No. 286.

(Memorandum from The Palace Company, Twelfth and Grand, Kansas City, Mo., to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked Commission's Exhibit 286 for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 286 for Identification, and ask you can you identify that as having been received by the Melba Dress Company? A. Yes, sir.

1089

Mr. Martin: I offer this in evidence.

Mr. Weisman: I object. No proper foundation has been laid, and the mere fact that this is some paper that was received by this company does not make that paper competent in evidence. There is no proof who sent it, and whether the person who

1090

Ben B. Hirsch—For Commission—Direct.

sent it was authorized to send it, and there is no proof to show the basis upon which it was sent, or anything about it. It is simply a loosely presented document. I do not think we should be bound by any such document as this and do not see how we can be.

Mr. Martin: I am offering this not for its value as to the truth of its contents, but I am simply offering it as being identified by him as being received by him.

1091

Mr. Weisman: I object to its entry in evidence on any such ground as that. Anything that this firm has received does not make it proper as an exhibit to be offered in evidence unless it was shown that this paper was sent out in due course, that it was sent out by someone who was authorized by the company to send it out, and those facts and circumstances surrounding it, it seems to me that it is entirely improper, immaterial and irrelevant, illegal and highly improper. If they sent this witness any kind of papers how would that be competent in this particular case?

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Objection overruled.

1092

(The document referred to, heretofore marked for identification Commission's Exhibit 286, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Was this document—

By Examiner Bennett.

Q. Just a moment. Mr. Hirsch, was this paper received by your firm in the ordinary course of business? A. Yes, sir.

Ben B. Hirsch—For Commission—Direct.

1093

By Mr. Martin.

Q. Was this document, Commission's Exhibit 287—first, I ask that this be marked for identification.

(Document from Jordan Marsh Company, Boston, Mass., under date of October 9, 1935, to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked for identification Commission's Exhibit 287.)

By Mr. Martin.

Q. Mr. Hirsch, in the conduct of your business have you ever transacted any business with Jordan Marsh Company of Boston, Mass.? A. Yes, sir. 1094

Q. I hand you Commission's Exhibit 287 for Identification, and ask you if you can identify that as having been received by the Melba Dress Company in the conduct of their business? A. Yes, sir.

Mr. Martin: I offer that in evidence, if your Honor please, at this time.

Mr. Weisman: I make the same objection as to that, if your Honor please, and I suppose you will make the same ruling?

Examiner Bennett: The same ruling. I shall expect you, of course, to connect this up directly with this case before you get through with it. They are received merely as a foundation for further testimony. 1095

(The document referred to, heretofore marked for identification Commission's Exhibit 287, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that these documents be marked for identification.

1096

Ben B. Hirsch—For Commission—Direct.

(Copy of card from Marshall Field & Company, 121 North State Street, Chicago, Ill., by R. Lundin, per E. A., under date of October 3, 1935, to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked for identification Commission's Exhibit 288.)

(Copy of card from Kresge Department Store, by "Phillips," under date of October 17, 1935, to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 289.)

1097

(Copy of card from Marshall Field & Company, 121 North State Street, Chicago, Ill., by E. Abbott, under date of October 10, 1935, to Melba Dress Company, 1375 Broadway, New York," was marked for identification Commission's Exhibit 290.)

By Mr. Martin.

Q. Has the Melba Dress Company ever transacted any business with the Marshall Field & Company of Chicago?

A. Yes, sir.

Q. I hand you herewith Commission's Exhibit 288 for Identification, and ask you if that was received in the ordinary course of business by the Melba Dress Company?

A. Yes, sir.

1098

Q. I hand you herewith Commission's Exhibit 290 for Identification, and ask you if that was received in the ordinary course of business by your firm? A. Yes, sir.

Q. Has your firm ever transacted any business with the Kresge Department Stores? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 289 for Identification, and ask you if that was received by your firm in the ordinary course of business? A. Yes, sir.

Mr. Martin: If your Honor please, I offer in evidence Commission's Exhibit No. 288, No. 289 and No. 290 for Identification.

Mr. Weisman: Same objection as to each of them and collectively.

Examiner Bennett: Same ruling.

(The documents referred to, heretofore marked for identification Commission's Exhibits 288, 289 and 290, were marked as exhibits and received in evidence.)

Mr. Martin: I ask that this document be marked for identification.

(A document from Marshall Field & Company, under date of October 19, 1935, to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked Commission's Exhibit 291 for Identification.)

1100

By Mr. Martin.

Q. I show you Commission's Exhibit for Identification No. 291, and ask you if that was received by your firm in the ordinary course of business? A. Yes, sir.

Mr. Martin: I offer in evidence this document, your Honor, being Commission's Exhibit 291 for Identification.

Mr. Weisman: The same objection and the same ruling, I suppose, Mr. Examiner?

Examiner Bennett: Yes, same ruling. The document is received in evidence.

1101

(The document referred to, heretofore marked for identification Commission's Exhibit 291, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that these two documents be marked for identification.

1102

Ben B. Hirsch—For Commission—Direct.

(A copy of a letter from Melba Dress Company, Inc., under date of October 8, 1935, to Marshall Field & Company, Chicago, Ill., attention Section 75/284, was marked for identification Commission's Exhibit 292.)

(A letter from T. C. O'Donnell, Marshall Field & Company, Chicago, under date of October 10, 1935, to Melba Dress Company, Inc., 1375 Broadway, New York City, N. Y., attention of Mr. Ben B. Hirsch, was marked for identification Commission's Exhibit 293.)

1103 *By Mr. Martin.*

Q. I hand you Commission's Exhibit No. 292 for Identification, and ask you can you identify that as a carbon copy of a letter to Marshall Field & Company, Chicago, Ill., under date of October 8, 1935—to Marshall Field & Company, and sent out by the Melba Dress Company?
A. Yes.

Q. I hand you Commission's Exhibit 293 for Identification, and ask you if you can identify that as an original letter received by Melba Dress Company from Marshall Field & Company and whether that was received by you in the ordinary course of your business? A. Yes, sir.

1104

Mr. Martin: I offer in evidence Commission's Exhibit No. 292 and Commission's Exhibit No. 293 for Identification.

Mr. Weisman: I object to the introduction of these letters. There has been no proper foundation laid, and they are both self-serving documents.

Examiner Bennett: I will receive them in evidence on the same basis as the others except here again they must be followed up by direct examination.

Ben B. Hirsch—For Commission—Direct.

1105

(The documents referred to, heretofore marked for identification Commission's Exhibits 292 and 293, were marked as exhibits and received in evidence.)

Mr. Martin: I ask that these two documents be marked respectively Commission's Exhibits 294-A and 294-B for Identification.

(Letter from W. B. Norwood, Traffic & Invoice Department, N. Snellenburg & Company, Market, Eleventh to Twelfth Streets, Philadelphia, Pa., under date of October 18, 1935, to Melba Dress Company, 1375 Broadway, New York, was marked for identification Commission's Exhibit 294-A.)

1106

(Copy of documents from N. Snellenburg & Company, Philadelphia, Pa. to Melba Dress Company, 1375 Broadway, New York, N. Y., was marked for identification Commission's Exhibit 294-B.)

By Mr. Martin.

Q. Mr. Hirsch, did Melba Dress Company ever sell any of its dresses to N. Snellenburg & Company, Philadelphia, Pa.? A. Yes, sir.

Q. I had you Commission's Exhibit 294-A for Identification and Commission's Exhibit 294-B for Identification, and ask you were those received by Melba Dress Company in the ordinary course of their business? A. Yes, sir.

1107

Mr. Martin: I offer these in evidence, if your Honor please.

Mr. Weisman: I object to it on all the grounds already urged and on the additional ground that this order blank does not even seem to tie up with the letter which states that there were six dresses at \$2.15 and the letter refers to four. And the let-

1108

Ben B. Hirsch—For Commission—Direct.

ter refers to an order given with stamp, and I say that it does not show where they put this on this order blank here. I have looked at it very carefully and I think they are quite different. They do not tie up with the order at all.

Examiner Bennett: Are they related papers?

Mr. Martin: The letter refers to the return shipment.

Mr. Weisman: It appears from a reading of the paper that they are not tied up at all.

Mr. Martin: It is obvious that they are connected.

1109

Mr. Weisman: Your Honor will see that they are not. Your Honor will see that there are six dresses at \$2.15, and obviously—also, they are the same style number, and this letter refers to four.

Mr. Martin: That is not the order to which reference is made. There is no stamp on the return slip. This is a return slip.

Mr. Weisman: They are certainly not competent because he returns six and not four, and he could not possibly refer to this. It seems to me that it is absolutely impossible for him to refer to that. He sends back six when he only claims for four, hardly possible as I see it.

1110

Examiner Bennett: We are going to Philadelphia anyhow, perhaps it would be better to take care of the matter then if you desire to do so.

Mr. Martin: I withdraw those for the time being. (Commission's Exhibits 294-A and 294-B withdrawn temporarily.)

(There was a discussion off the record.)

Mr. Weisman: I object to the witness talking to counsel.

Mr. Martin: It does not make any difference, anyway, because I am not going to offer them now.

Ben B. Hirsch—For Commission—Direct.

1111

Mr. Weisman (to the witness): You are supposed to answer questions here and not talk to counsel.

Mr. Martin: I will direct my own witnesses if you do not mind.

I would like to have this document marked Commission's Exhibit 295 for Identification.

(A document from N. Snellenburg & Company, Philadelphia, Pa., under date of October 19, 1935, to Melba Dress Company, 1375 Broadway, New York City, N. Y., was marked for identification Commission's Exhibit 295.)

By Mr. Martin.

1112

Q. I hand you Commission's Exhibit 295 for Identification, and ask you if that was received by you in the ordinary course and conduct of your business? A. Yes, sir.

Mr. Martin: I offer in evidence, if your Honor please, Commission's Exhibit No. 295 for Identification.

Mr. Weisman: The same objection and the additional objection that it is immaterial. On the further objection that the wording on its face is wholly unintelligible. It says "Being returned by or for some other reason."

Examiner Bennett: The "or" is evidently a misprint. It will be received.

1113

(The document referred to, heretofore marked for identification Commission's Exhibit 295, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that this document be marked for identification Commission's Exhibit 296.

(A letter from Kline's, St. Louis, Mo., under date of October 11, 1935, to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 296.)

1114

*Ben B. Hirsch—For Commission—Direct.**By Mr. Martin.*

Q. Mr. Hirsch, has your firm ever transacted any business with the Kline's Store of St. Louis, Mo.? A. Yes, sir.

Q. I hand you Commission's Exhibit 296 for Identification, and ask you if that letter was received by your firm in the ordinary course and conduct of its business? A. Yes, sir.

Mr. Martin: I offer this in evidence, if Your Honor please.

Mr. Weisman: Same objection as I stated before, and I assume the same ruling, Your Honor?

Examiner Bennett: Overruled. It will be received in evidence.

1115

(The letter referred to, heretofore marked for identification Commission's Exhibit 296, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that this document be marked Commission's Exhibit 297 for Identification. I also ask that this document be marked Commission's Exhibit 298 for Identification.

(Document from Kline's Incorporated, St. Louis, Mo., to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 297.)

1116

(Document from Kline's Incorporated, St. Louis, Mo., to Melba Dress Company, 1375 Broadway, New York City, was marked for identification Commission's Exhibit 298.)

By Mr. Martin.

Q. I hand you Commission's Exhibit No. 297 for Identification, and ask you whether that was received by your firm in the ordinary course of its business? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 298 for Identification, and ask you if that was received in the ordinary course of your business? A. Yes, sir.

Mr. Martin: I offer in evidence, if Your Honor please, Commission's Exhibits Nos. 297 and 298 for Identification.

Mr. Weisman: I object to that on the ground that they are not connected up with anything in addition to the other objections which I have heretofore made.

Mr. Martin: They are part of the subject matter that is set forth on them and which makes them perfectly admissible. They are perfectly plain as to what they are. It is right there on their face. You do not have to go any further than their face to see just what they are. 1118

Mr. Weisman: They are not connected with the other letters.

Mr. Martin: Certainly not. This is a different transaction.

Mr. Weisman: I see. I object. I make the same objection. I suppose the Examiner will make the same ruling?

Examiner Bennett: Yes. They will be received. Objection overruled.

(The documents referred to, heretofore marked for identification Commission's Exhibits 297 and 298, were marked as exhibits and received in evidence.) 1119

Mr. Martin: I ask that this document be marked Commission's Exhibit 299 for Identification.

(A letter from Carson Pirie Scott & Company, by Mr. George G. Brown, Chicago, Ill., under date of

1120

Ben B. Hirsch—For Commission—Direct.

September 4, 1935, to Mr. Larry Hirsch, Melba Dress Company, New York City, was marked for identification Commission's Exhibit 299.)

By Mr. Martin.

Q. I hand you, Mr. Hirsch, Commission's Exhibit 299 for Identification, and ask you if this is a letter which was received by you from Carson, Pirie Scott & Company, Chicago, Ill., in the ordinary course of your business? A. Yes, sir.

1121

Mr. Martin: I offer this in evidence, if Your Honor please.

Mr. Weisman: I make the same objection.

Mr. Martin: All of these, if Your Honor please, are of the same type.

Examiner Bennett: The objection is overruled. It will be received in evidence.

(The letter referred to, heretofore marked for identification Commission's Exhibit 299, was marked as an exhibit and received in evidence.)

Mr. Martin: I ask that this document be marked Commission's Exhibit 300 for Identification.

1122

(A document from Carson Pirie Scott & Company, Chicago, under date of October 18, 1935, to Melba Dress Company, Inc., New York, N. Y., was marked for identification Commission's Exhibit 300.)

By Mr. Martin.

Q. Mr. Hirsch, I hand you Commission's Exhibit for Identification 300, and ask you if that was received by you in the ordinary course and conduct of your business? A. Yes, sir.

Ben B. Hirsch—For Commission—Direct.

1123

Mr. Martin: I offer this in evidence, Your Honor, as Commission's Exhibit 300.

Mr. Weisman: Same objection.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 300, was marked as an exhibit and received in evidence.)

(Documents from Palace Clothing Company, Kansas City, Mo., to Melba Dress Company, New York City, were thereupon marked for identification Commission's Exhibits 301-A and 301-B for Identification.)

1124

By Mr. Martin.

Q. I hand you Commission's Exhibits 301-A and 301-B for Identification, and ask you if these were received by you in the ordinary course and conduct of your business from the Palace Clothing Company, Kansas City, Mo.? A. Yes, sir.

Mr. Martin: I offer these in evidence, Your Honor.

Mr. Weisman: May I have the same objection and exception?

Examiner Bennett: Yes, certainly.

Mr. Martin: It is all of the same character.

Examiner Bennett: Same character?

1125

Mr. Martin: Same character, sir.

Examiner Bennett: Received, exception noted.

(The documents referred to, heretofore marked for identification Commission's Exhibits 301-A and 301-B, were marked as exhibits and received in evidence.)

1126

*Ben B. Hirsch—For Commission—Direct.**By Mr. Martin.*

Q. Mr. Hirsch, did Melba Dress Company ever transact any business with Leah Rubenstein of St. Louis? A. St. Louis?

Q. St. Louis, Mo. A. Yes, sir.

Mr. Weisman: I take it you are offering these?

Mr. Martin: I will put this in evidence, Your Honor. He has not identified it yet.

Mr. Weisman: I won't raise any question on it. Same objection, I take it, and ruling by the Court?

Examiner Bennett: Yes, same ruling, received.

1127

(A letter from Leah Rubenstein, Leah Rubenstein Dress Shop, Saint Louis, Mo., under date of October 28, 1935, to Melba Dress Company, New York, N. Y., was marked Commission's Exhibit 302, and received in evidence.)

Mr. Martin: Will you give them a number?

(An invoice from Frank & Seder, Philadelphia, Pa., to Melba Dress, New York City, was marked for identification Commission's Exhibit 303-A.)

(Letter from Frank & Seder, Philadelphia, Pa., by O. Massell, under date of November 1, 1935, to Melba Dress Company, New York, was marked Commission's Exhibit 303-B for Identification.)

1128

(A copy of a letter from Melba Dress Company, Inc., under date of November 2, 1935, to Frank & Seder, Eleventh & Market Streets, Philadelphia, Pa., attention of Mr. O. Massell, was marked for identification Commission's Exhibit 303-C.)

Mr. Weisman: Where is the letter to which this is an answer?

Mr. Martin: There is the letter and there is the answer (indicating).

Ben. B. Hirsch—For Commission—Direct.

1129

By Mr. Martin.

Q. Mr. Hirsch, did the Melba Dress Company ever have any transaction or sell anything to Frank & Seder, of Philadelphia, Pa.? A. Yes, sir.

Q. (Indicating) I hand you herewith Commission's Exhibit for Identification 393-A, which purports to be an order from Frank & Seder, and ask you can you identify this as having been received by your company in the ordinary course of business? A. Yes, sir.

Mr. Weisman: Why do you not offer these separately, and have one separate objection.

Mr. Martin: Just let me get them all identified.

By Mr. Martin.

1130

Q. I hand you a letter from Frank & Seder, dated November 1, 1935, and ask can you identify that as having been received by you in the ordinary course of business? A. Yes, sir.

Q. I hand you what purports to be a carbon copy of a letter from the Melba Dress Company to Frank & Seder under date of November 2, and ask you can you identify that as a carbon copy of a letter sent by your firm to them under that date? A. Yes, sir.

Mr. Martin: Now, if Your Honor please, offer in evidence Commission's Exhibits 303-A, B, and C.

Mr. Weisman: Now, I object to the introduction into evidence of Commission's Exhibit 303 for all the reasons I have before given, and, further, for the separate reason that it is wholly immaterial, it has no connection with the charge here, it is an order from this company.

1131

Mr. Martin: And part of a completed transaction.

Mr. Weisman: That does not make it a completed transaction.

1132

Ben B. Hirsch—For Commission—Direct.

Mr. Martin: All of those papers refer to each other.

Mr. Weisman: The fact that a paper refers to another still would not make it competent evidence under the rules of evidence, and if there is some other reason connecting it with this Guild, or connecting it with us—nothing about Fashion Originators' Guild in that.

(There was a discussion off the record.)

Mr. Weisman: I have separate objections to these as we come to them, Your Honor.

1133

Examiner Bennett: I wish you would find out whether they actually got these dresses or not.

Mr. Weisman: I also object to Commission's Exhibit 303-C, because, while on the theory that Your Honor has allowed this in—somebody said to them, obviously an ex parte statement made, in their letter to Frank & Seder, would have no bearing on the issues in this case.

Examiner Bennett: It is not evidence of the wrongdoing of the Guild, or anything of that sort. It simply explains the whole transaction.

Mr. Weisman: I submit, Your Honor, if you will read this letter it explains nothing, but states this witness' characterization of the Guild's activities.

1134

Examiner Bennett: It shows a protest on the part of the merchant against the action of the buyers because of the influence of the Guild. It is received in the regular course of business, I imagine. I wish you would ask about that. I am asking for further examination before I pass on it. I want to know whether he actually shipped those dresses to that man and whether he actually received them back.

By Mr. Martin.

Q. Will you refer to Commission's Exhibit 303-A, and tell me whether that order refers to this letter or this letter refers to that order. Commission's Exhibit 303-B refers to Commission's Exhibit 303-A (indicating).

Mr. Weisman: Wait a moment. I object to that as incompetent. The exhibit speaks for itself.

Examiner Bennett: Yes, it does for what it has on it, but for nothing else it does not speak for itself. It was this man's transaction; he can say whether they were part of the same deal or not.

The witness: Your Honor, this refers to the same as the style 175, eight dresses, excepting in this letter which we have been reading, there were returned eight dresses, 875; evidently the stenographer in taking that down got that 875 instead of 175, eight dresses.

1136

Mr. Weisman: I object to the witness—

The Witness (interposing): It refers to the identical—

Mr. Weisman: —guessing as to what the stenographer said or did. I mean, that shows the vice of this type of testimony. The order does not refer to any style number as given in the letter. Now, in an effort to get this into evidence after Your Honor has made that statement, the witness proceeds to prognosticate or read somebody else's mind, or tell you how he can tie it up by something he thinks somebody else made a mistake about. I submit that is the vice of this type of testimony.

1137

Mr. Martin: Your Honor please, this is a transaction arising in the ordinary course of the conduct of the witness' business with which he is fully familiar, and he has testified that these two papers do refer to the same transaction.

1138

Ben B. Hirsch—For Commission—Direct.

Examiner Bennett: Yes.

Mr. Weisman: He hasn't done anything of the kind.

Examiner Bennett: I want to ask one or two questions.

By Examiner Bennett.

Q. Did you actually sell and ship those dresses to that customer? A. Yes, sir.

Q. Did you actually receive them back? A. Yes, sir; we actually got back eight dresses of style 175.

1139

Examiner Bennett: Overruled. Received.

Mr. Weisman: Exception.

(The documents referred to, heretofore marked for identification Commission's Exhibits 303-A, 303-B, 303-C," were marked as exhibits and received in evidence.)

(An invoice from Samuel Hoffman, Inc., 128-136 West 31st Street, New York, to Melba Dress Co., New York, and charged to Philip Sapadin, Cincinnati, Ohio, was marked for identification Commission's Exhibit 304 for Identification.)

By Mr. Martin.

1140

Q. Before we adjourned for lunch, Mr. Hirsch, I asked you if you had any of your orders which contained the Guild stamp giving the purchaser the right to return the goods if they were judged to be copies, and you said that you would attempt to locate one for me. Have you located one? A. Yes, sir.

Q. I hand you Commission's Exhibit 304 for Identification, which purports to be an order from Philip— A. Philip Sapadin.

Q. Philip Sapadin of Cincinnati, Ohio, and ask can you identify that.

Mr. Haycraft: I think Counsel for the Respondent should refrain from going into the witness' papers until they have been put in evidence.

Mr. Weisman: You are mistaken; he brought those down for me; those are my papers.

Mr. Haycraft: He has not said so on the record.

Mr. Weisman: I don't care; he has not said they are his.

Mr. Haycraft: That is all right.

Mr. Weisman: Mr. Hirsch was kind enough to bring me down these papers. I did not take him to lunch to go over his testimony with him. I did not need it. He was kind enough to say he would bring those papers down to me. Please do not take this. 1142

Mr. Haycraft: I suggest, Mr. Examiner, that we proceed in the orderly way.

Mr. Weisman: No one is interrupting this proceeding.

Examiner Bennett: I wish you gentlemen would stop your bickering back and forth, and I will ask Counsel to keep out of those papers until the proper time.

Mr. Weisman: May it please Your Honor, those are my papers.

Mr. Haycraft: Ha, ha. 1143

Examiner Bennett: Well, if those are your papers you have not come to the point of using them, and you are not going to at the present time.

Mr. Weisman: May I take them out of there, then, and put them behind the fail and go over them?

Mr. Haycraft: I object until they are properly identified.

1144

Ben B. Hirsch—For Commission—Direct.

Mr. Weisman: You have nothing to do with those papers?

Mr. Haycraft: We will see about that.

Mr. Weisman: I want to see about it now.

Mr. Haycraft: All right.

Mr. Weisman: You are telling me what I can do with my papers.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We will take a recess for 10 minutes. You gentlemen can cool off. I am not listening to that kind of stuff.

1145

(There was a short recess taken.)

Examiner Bennett: Be in order, please

Will you come around and resume the stand, Mr. Hirsch?

Mr. Weisman: Mr. Hirsch is not here yet, Your Honor. He just stepped out.

Examiner Bennett: We will wait until he comes.

Mr. Weisman: Here he is now.

By Mr. Martin.

Q. Mr. Hirsch, I hand you Commission's Exhibit 304 for Identification, and ask you if you can identify that as an order received by Melba Dress Goods Company from that concern? A. Yes, sir.

1146

Mr. Martin: I offer this in evidence.

Mr. Weisman: Same objection.

Examiner Bennett: Overruled. It will be received.

(The document referred to, heretofore marked for identification "Commission's Exhibit 304," was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Mr. Hirsch, when did you first start receiving orders which contained the stamp as set out in Commission's Exhibit No. 304, which reads as follows: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Inc.; the purchaser reserves the right to return any merchandise which is not as warranted." When did you first start receiving orders with that stamp on it? A. I believe several months prior to the date of that order which was in August, 1935. Some time prior to that, I am not certain of the exact date.

Q. Did you at first accept orders with that stamp on it? A. No, sir. We refused to at first, and—

1148

Mr. Weisman (interposing): May I submit the answer to that question would be "yes" or "no."

Mr. Martin: I think, if your Honor please, he has a perfect right to answer that question and is not limited to any "yes" or "no."

Mr. Weisman: May we have the question read and I think the Court will readily see that it is only such a question as to which the answer is limited to "yes" or "no" properly.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: He can say he did or he didn't.

1149

By Examiner Bennett.

Q. Go ahead and answer the question. A. We refused to at first—does that cover you?

By Mr. Martin.

Q. What did you do, Mr. Hirsch, when you first began receiving those orders?

1150

Ben B. Hirsch—For Commission—Direct.

Mr. Weisman: I object to the question as incompetent, immaterial and irrelevant what this witness did. How can that bind us any way? How can we be bound in any way by a statement of that character?

Mr. Martin: If your Honor please, that is a perfectly proper question. Here we are dealing with the Fashion Originators Guild of America, Inc., that places certain requirements upon and in the conduct of his business with which he is fully familiar, and I think he is perfectly qualified to testify to what he did.

1151

Mr. Weisman: Mr. Martin I regret to say is still in error, of course. He did not at any time do business with members of the Fashion Originators Guild. I think you will concede that you are wrong about that. Members of the Fashion Originators Guild are dress manufacturers, and that is all. No one else except members of the Fashion Originators Guild exist except dress manufacturers.

1152

Mr. Martin: All of these people who signed the declaration of co-operation and entered into the agreement with the Fashion Originators Guild concerning requirements which were placed by those people in order to do business with them, and I think that this witness has a perfect right and is at perfect liberty to tell what occurred to his business and what was done and so forth.

Examiner Bennett: Make your questions a little more specific along that line.

By Mr. Martin.

Q. I believe you were asked whether you did or did not accept orders with this stamp on them, and I believe that you said that at first you did not accept them. A. Yes

Q. Did you later accept orders with this stamp on them? A. Yes, sir.

Q. What prompted you to make this change in that regard?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant what prompted him to make changes in that regard.

Examiner Bennett: Overruled. We will see whether he has any factual information or not, and if he has not then we can act accordingly.

A. I could not get business from those offices unless I did accept the order with the stamp on it. The buyer invariably told us that they had no jurisdiction over that. 1154

Mr. Weisman: Just a moment. I ask that the latter part of this be stricken.

Examiner Bennett: No. It is perfectly proper in this connection. Proceed.

A. The buyer invariably told us that they could not leave the order with us without the stamp on it.

Mr. Weisman: The witness in this case uses the word "buyer" in a sense that is not generally used in law, if your Honor please.

Examiner Bennett: I understand what he means. Proceed. 1155

A. They said they had their orders from the head office, or, rather, the head of their firm to leave no orders without this warranty stamp on it. Fearing losing our business completely, we were compelled to take these orders with the stamps on them.

Mr. Weisman: I renew my motion to the latter part of the answer.

1156

Ben B. Hirsch—For Commission—Direct.

Examiner Bennett: It may be stricken as a conclusion beginning with the word "fearing."

By Mr. Martin.

Q. Mr. Hirsch, I hand you Commission's Exhibit No. 93-A, which purports to be a list of resident buyers, or, rather, resident buying officers who have signed the special declaration together with the regular declaration as of April 16, 1936.

Examiner Bennett: What is the exhibit?

Mr. Martin: That is Commission's Exhibit 93-A.

1157

By Mr. Martin.

Q. I will ask you if you ever transacted any business with any of those buying firms? A. With at least 70 per cent. of them.

Q. Have you ever transacted business with the Associated Merchandisers Corporation? A. Some business; not very large, I am sorry to say.

Q. Now, I ask you did any of these buying offices on this list, Commission's Exhibit No. 93-A, require that the Guild stamp be placed on their orders? A. Most of these 70 per cent. that I referred to did, perhaps all of them.

Q. Did the Associated Merchandisers Corporation require the stamp on those orders that they let? A. I believe they did.

1158

Q. Now, Mr. Hirsch, what effect on your business did those requirements of these buying offices that all orders containing the Guild stamp have this requirement?

Mr. Weisman: I object to that as calling for a conclusion of the witness, and asking for his opinion and not a fact. How do we know whether or not the depression affected his business, and whether his inability to get credit affected his business.

I submit that the question does not call for any fact at all, and is entirely improper.

Mr. Martin: I think it is a perfectly proper question and calls for a definite fact, and——

Mr. Weisman (interposing): I do not think so.

Mr. Martin: Let me finish, Mr. Weisman, then you may go ahead as long as the Judge will hear you.

Mr. Weisman: All right. I beg your pardon. I thought you had finished.

Mr. Martin: No. Mr. Hirsch is thoroughly cognizant with the running of his own business, and he certainly is able to tell what effect his requirements had on his business.

1160

Mr. Weisman: May I reply?

Mr. Martin: Go ahead. I have concluded.

Mr. Weisman: Thank you.

I submit any witness is qualified to tell what factual things that happened to his knowledge, as to what has gone in his business, and actions, and so forth, and so forth.

Obviously, it would be highly contrary to our Anglo-Saxon safeguards in the law of evidence to put a witness on the stand and say what effect did this have on your business? I have no opportunity of cross-examination. Our theory of evidence under the Anglo-Saxon law is one of the production of facts. I think this is the Roman style of examining where the witness is asked to give his opinion and state what his neighbor said and everything else. It is perfectly obvious that I cannot cross-examine the witness on any such sweeping statement as this where he simply covers the whole compass of the horizon in one swift blow. He is covering the whole gamut of industrial relations in one wide sweep.

1161

1162

Ben B. Hirsch—For Commission—Direct.

How can we possibly cross-examine on that? I think it is very unfair to us to ask a question of this sort. Let him answer facts and we will see what they mean.

Examiner Bennett: I do not want to hear any more argument further on that question.

I will let him answer. You will have to develop it in detail, of course.

The Witness: May I ask what the question was again; I have forgotten.

(Question read.)

1163

A. Practically none as far as the selling end of it, and—

Mr. Weisman: I submit that is an answer "practically none as far as the selling end of it."

Examiner Bennett: No.

The Witness: As far as the selling end of it is concerned only.

Examiner Bennett: Obviously it is not the answer. Go ahead.

The Witness: Practically none as far as the selling end is concerned, because, as I stated before, we were not in position to refuse to take the orders without the stamp on it, but in the returns end of it we suffered quite a bit.

1164 *By Mr. Martin.*

Q. Explain how you suffered in the return end?

Mr. Weisman: I object to the part of the answer beginning "suffered quite a bit," and ask that that be stricken out.

Examiner Bennett: Denied.

Mr. Weisman: Your Honor allowed that to remain? My motion was denied?

Ben B. Hirsch—For Commission—Direct.

1165

Examiner Bennett: Denied.

Mr. Weisman: Exception.

A. Now, I will give you an accurate statement of my sales and returns and the percentages of each of those years of 1934 as compared with 1935.

During the latter part of the year, a five-month period in which the damages or the losses that we sustained by reason of the returns were greater than at other times of the year.

In the month of August, 1934, our percentage of returns against sales was 4 per cent. For the year August, 1935, or, rather, for that month, it was the same, 4 per cent. For the month of September, 1934, our returns against sales were 6 per cent.; September, 1935, we only went up 1 per cent. in the percentage of returns against sales, however, meaning an actual increase in the returns of about 16 per cent.

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For the month of October, 1934, our returns against sales was 9 per cent., and for the month of October, 1935, we had 10 per cent. again; an increase of 1 per cent. in the proportion of returns, meaning an actual percentage increase in the proportion of returns of approximately 16 per cent. on the average against the returns themselves.

For the month of November, 1934, our percentage of return against sales was 8 per cent., and for the month of November, 1935, they had jumped up to 11 per cent., that only being an increase of 3 per cent. of sales against returns, or approximately 33 per cent. increase in the returns; that is, for the month of November, 1935, against that of November, 1934.

1167

In December, 1934, our percentage of returns against sales was 10 per cent., and for the month of December, 1935, we were 11 per cent., against an increase of 11 per cent., or 16 per cent., for which—this 16 per cent. average in the returns themselves is apparent there. In other

1168

Ben B. Hirsch—For Commission—Direct.

words, in December, 1934, our percentage of returns against sales was 10 per cent. For the month of December, 1935, they were 11 per cent., again an increase of 1 per cent., or 16 per cent. average in the returns themselves.

These figures for the month of October, especially, and December—and November and December, I attribute directly—

Mr. Weisman: I object to "I attribute directly."

Examiner Bennett: All right. I think he may answer.

Mr. Weisman: May I have an exception.

1169

Examiner Bennett: I think he may answer to that point. That may be stricken. The latter part of the statement may be stricken.

Mr. Weisman: That's you.

The Witness: May I go ahead?

Mr. Weisman: No, you cannot. The Court said for you not to say anything more.

By Examiner Bennett.

Q. That will conclude your answer there.

Examiner Bennett: Go ahead and question your witness.

By Mr. Martin.

1170

Q. To what do you attribute this increase in returns?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant; and highly improper.

Mr. Martin: I think it is a perfectly proper question, your Honor. Mr. Hirsch is only competent to testify as to what goes on in his business.

Mr. Weisman: Exactly.

Mr. Martin: But he is fully competent to testify to anything that did go on in his business, and that is all I am asking him about.

Mr. Weisman: He is not competent to testify as to conclusions.

Examiner Bennett: I will overrule the objection. Go ahead.

A. I attribute the increase in these returns primarily to the activities of the Guild in asking my customers to return to us dresses that they claim, or, rather, the Guild's representatives claimed were alleged copies of dresses made by their members and registered by their members.

By Mr. Martin.

Q. Now, Mr. Hirsch, at the times that these returns increased were you working with the same contractors and the same workmen and the same delivery people? A. Yes, sir.

1172

Q. And under similar conditions as you had always conducted your business with the exception of this Guild stamp? A. Correct.

Q. Can you determine what percentage of your customers during those months insisted upon placing the Guild stamp upon their order blanks? I refer to the Guild warranty. A. About 50 per cent. of my customers, which amounts to about 80 per cent. of our business.

Q. By volume? A. Yes, by volume.

Mr. Martin: The witness is with you.

Mr. Weisman: What is that?

1173

Mr. Martin: The witness is with you. You may cross-examine, Mr. Weisman.

Mr. Weisman: Thank you.

Cross-examination by Mr. Weisman.

Q. Mr. Hirsch, there has been some testimony here this morning that—or, rather, this afternoon, that you are the president of the Popular Priced Frocks—is that the name of the organization? A. No.

1174

Ben B. Hirsch—For Commission—Cross.

Q. What is it? A. Popular Priced Dress Manufacturers Group, Inc.

Q. Is that a group of manufacturers who are people who believe in copying? A. No, sir.

Mr. Martin: I object, if your Honor please. There is no evidence to that effect. It is not a proper subject of cross-examination. There is no evidence along that line at all.

Mr. Weisman: There certainly is. The record is just full of it.

Mr. Martin: Wait a minute. Please wait until I finish my statement before you start on yours.

1175

There is no evidence in this record, as far as this witness has testified, dealing in any way with copying.

Mr. Weisman: Have you finished?

Mr. Martin: Yes.

Mr. Weisman: I submit that this hearing is full and replete with evidence that this is a hostile witness to the respondent, who has testified that he is president of an organization known as the Popular Priced Frocks—is that it?

The Witness: Popular Priced Dress Manufacturers Group.

1176

Mr. Weisman: I think it is perfectly competent for me to show animus or lack of animus on the part of this witness; prejudice, or anything of that sort which would color and affect his testimony. I think it is further proper for me to show the conduct of this group of manufacturers in the past, and the policy to which they have been committed, not only originally, but operating as a group, so that the Commission in its review of the testimony of the president of this organization may see whether it has any probative value or not.

Therefore, I submit it is a proper subject of inquiry on cross-examination so that I may show just as I might show that a witness has a bad character, or has been convicted of a felony or anything of that sort in a court of first instance.

Examiner Bennett: I will allow you to show anything that indicates prejudice on the part of this witness.

Mr. Weisman: Thank you.

Examiner Bennett: Certainly. Go ahead.

By Mr. Weisman.

Q. The Popular Priced Group of Manufacturers appeared in Washington at certain N.R.A. hearings; do you remember that? A. Right. 1178

Q. And they appeared there in opposition to the proposition to put into the Code of Fair Competition for the Automobile—for the Dress Industry a provision which would make copying of originations, style originations, an unfair trade practice; is that right? A. Not completely that. Not completely that.

Q. Do you remember on one occasion when they did come there completely for that purpose, when their counsel, Mr. Thomas Sheridan, who is now associated with your counsel, Mr. Charles Ballin; do you remember that occasion? A. Of course I do.

Q. On that occasion they came there completely for the purpose of lending all of their efforts to defeat the proposition of writing into the Code of Fair Competition for the Dress Industry a provision to the effect that a copying of an original style was an unfair trade practice; is that so? 1179

(There was a discussion off the record.)

Mr. Martin: Is counsel asking a question or making a statement?

1180

Ben B. Hirsch—For Commission—Cross.

Mr. Weisman: I am asking a question.

Mr. Martin: I just want to make certain.

Examiner Bennett: Have you finished your question?

Mr. Weisman: Yes.

The Witness: What is the question?

(Last question read.)

1181 A. They were there to oppose starting an amendment to the Dress Code, setting up a style registration bureau in the Dress Industry, which would have created havoc to every dress man in the dress business, irrespective of whether he was making \$99.50 or \$49.50 stuff.

Q. You mean that is your opinion? A. Yes, sir.

Q. The Code Authority had a different opinion? A. There was no decision from the Code Authority. By the time the N.R.A.—there was no decision from the N.R.A. Administration by the time, on that thing, by the time that the N.R.A. was declared illegal.

Q. Is not your association composed of men who have gone on record as being opposed to the protection of original styles? A. On the ground that there are no original—

Q. No, not on the ground—

Mr. Martin: Please let the witness answer.

By Mr. Weisman.

1182

Q. Will you please answer my question?

Mr. Weisman: I submit the witness should answer that question "yes" or "no." Mr. Martin can bring out the grounds, if your Honor thinks it is immaterial. I am interested in the facts.

Mr. Martin: If your Honor please, I think Mr. Weisman is perfectly right in asking any question to show the witness' prejudice, but certainly he is not entitled to show prejudice of an association to which the witness belongs.

Mr. Weisman: No, he does not belong; he is the chief executive officer and president.

Mr. Martin: —for which he is the president, and a member of the board of directors.

Examiner Bennett: I am going to let him—

The Witness: What is the question?

Examiner Bennett: —I am going to let him testify as to his understanding as to the exact purposes of this particular organization where he was identified with them.

Were you, at the time that you speak of, president?

The Witness: Yes, sir.

Examiner Bennett: Were you president?

1184

The Witness: Yes, sir; at all times.

(Last question read.)

Examiner Bennett: He is going to be permitted to explain his answer.

A. We are not opposed to the protection of original styles, but we are opposed to an organization setting up that they are creators of original styles. We are not opposed to the design patent bureau of the United States, where a man who is a creator of original styles can go for protection. We do oppose any organization setting up that they are the judge and jury of the originality of any style.

1185

By Mr. Weisman.

Q. What do you know about design patents? A. I have subscribed to the—

Q. I do not ask you what you subscribe to.

Mr. Martin: Let him answer the question.

Mr. Weisman: May I be—

Mr. Martin: He is telling you what he knows.

1186

Ben B. Hirsch—For Commission—Cross.

Examiner Bennett: Yes, let him answer your question; that is what he is trying to do.

Mr. Weisman: I submit that the witness—

Examiner Bennett: You asked what he knew.

Mr. Weisman: I asked what he knew.

Examiner Bennett: Yes.

Mr. Weisman: Not what he subscribes to.

A. I know plenty of designs, but I don't know very much of the legal questions involved in connection with patents. I am not an attorney, but I am a dress man.

1187 *By Mr. Weisman.*

Q. Is it your belief that original designs should only be protected through design registration in the Patent Office? A. Correct.

Q. Because— A. I am sorry. Excuse me.

Q. You say that is correct. Have you that belief because you have been advised that the design patent law is totally inadequate for the protection of such designs?

A. Of course not, Mr. Weisman. If it is adequate for the protection of a man who invents an electric bulb, or something new in radio, or something new in an automobile accessory, it certainly is adequate for a dress manufacturer.

1188 Q. In other words, you say that the protection given to an electric bulb manufacturer is the same type of protection that an original design in dresses requires; is that your best answer? A. I dispute the question of originality in dresses, Mr. Weisman.

Q. No, you said that you felt that the design protection laws of the United States Patent Office, as enacted, and through the Patent Office, if they were sufficient to protect automobiles—I mean, inventions of matters going into automobiles— A. Yes.

Q. —or for bulbs in electric lights, that then they were sufficient to protect original designs in dresses; is that so? A. The United States Government can protect the property rights, and it is their business to do it, and they do it.

Q. And that is your best answer? A. That is my answer.

Q. Let me ask you this: Do you know how long it takes to get a design patent issued? A. To-day—totally too short a time—from three to four weeks.

Q. Three to four weeks? A. Correct.

Q. Do you say that is too short a time? What do you mean by too short a time? You mean it should take longer? A. You make a design investigation of the styles available—— 1190

Q. You say— A. —to get a property right, Mr. Weisman, I believe that a thorough investigation should be made of an application for a property right before even the United States Patent Office would issue it, let alone a private guild, or anything else along that line.

Q. How long do you think it ought to take before a design patent should issue from the Patent Office? A. Depends upon the set-up of the Patent Office, and how many——

Q. You just said you thought that three to four weeks was too short a period. A. If it takes two to three years to make an investigation of the application for a patent on a mechanical contrivance, it certainly should not be issued in the dress business in a period of two or three weeks, when millions of dresses must be investigated to see you have anything like that, anything similar to a dress that an application for a patent has been made from what has been made before. 1191

Q. In other words, you believe that before a design patent should issue and the originator be protected in his claim of origination, that it should take two or three years? A. I don't say anything of the kind.

1192

Ben B. Hirsch—For Commission—Cross.

Q. I find you— A. I am saying that a thorough investigation should be made of the application for property rights before it is issued by any governmental body.

Q. I am trying to find out. You volunteered the information to me that you thought three to four weeks was too short a time. A. With the present set-up of the bureau.

Q. How long would be an adequate time? A. Depending upon the set-up of the Patent Office.

Q. What, in your opinion, in the science which you say—I will withdraw that. You had some opinion of the set-up of the Patent Office, when you said three to four weeks was too short a time, did you not? A. Yes, sir.

1193

Q. Now, with that knowledge, how much time do you think should be taken to adequately do that job? A. Depending upon the set-up of the Patent Office and its personnel.

Q. You use the same set-up that you had in mind when you gave me your answer, that three to four weeks was insufficient. Using that set-up that you then had in mind, how much time do you think would be sufficient? A. That is a hypothetical question and I could not answer that.

Q. Well, you said you could answer that three to four weeks was not sufficient. A. Because, Mr. Weisman, that is predicated—

Q. No, no. A. I am sorry.

1194

Q. Could you answer that? A. Answer that what?

Q. Did you or did you not say that three to four weeks was too quick to issue a design patent to protect originalities? A. I am basing that upon some—

Q. I did not ask you about what you based it on, Mr. Hirsch. I am asking you, did you make that statement? A. Yes, I did make that statement.

Q. When you made that statement you believed it to be true? A. Of course.

Q. And you had certain knowledge upon which you based that statement under oath, did you not? A. Now—

Q. "Yes" or "no." A. I don't know what you mean.

Q. Did you have any knowledge— A. I don't know what you—

Q. Which was the basis of that statement? A. May I tell you what that knowledge is?

Q. No, I want to first find out whether you had knowledge. A. You may call it knowledge, perhaps it was.

Q. Was that a dress that you had— A. No, that was based upon the dresses that they have already issued patents on.

Q. Well, do you know anything about the facilities of the Patent Office? A. No, I do not.

1196

Q. So that, notwithstanding your lack of knowledge as to the facilities that the Patent Office had, you made the gratuitous statement to me that you thought three to four weeks was too quick to issue a patent? A. Well, that is—

Q. Is that so? A. That was predicated—

Q. "Yes" or "no." A. I made that statement to you, of course I did.

Q. All right. What is the average style life of a dress in the dress industry? A. Sometimes it is twenty minutes if it is a dud.

Q. Suppose— A. (Interposing) And sometimes it will last for years. I have made one number for four years' time.

1197

Q. What number have you made for four years' time? A. I have made No. 734 for the period of three to four years, until about a year ago.

Q. Well, now— A. (Interposing) I am not sure, I may not remember the number, but I will give you a description of it to make sure.

Q. No, I want to get the number of this dress you made for four years. A. For three years' time, I don't—

1198

Ben B. Hirsch—For Commission—Cross.

Q. Wait a moment, now. Didn't you say a moment ago four years? A. Between three to four years.

Q. Which was it? A. Between three to four years.

Q. Well, was it for two and three years? A. I haven't made any definite check-up about it. The best of my recollection is it was a period between three and four years.

Q. Will you make a definite check-up to-night and tell me when you first manufactured that dress? A. I will attempt to if I have the available files.

Q. Will you tell me how long you continued to sell that dress? A. I will attempt to.

Q. Will you also give me the number of orders and re-
1199 orders that you got on that dress— A. I will—

Q. —for the first six weeks after you manufactured it—
A. I—

Q. —and for the last six months of the three-year period? A. I won't be able to. I don't believe these records are available.

Mr. Martin: I object.

Mr. Weisman: I think I can show on the credibility of this witness—

By Mr. Weisman.

Q. Where are those records? A. Which records? Manufacturing records?

Q. Wait a moment. You know what records. You said
1200 to me those records are not available? A. They may not be available.

Q. And then when I said to you— A. I said they may not be available.

Mr. Weisman: Will you please read the record. The last two or three questions and answers.

(Record read from.)

By Mr. Weisman.

Q. Now, then, you know what records I was referring to when you replied to me, which records? A. If you want the charge books, sales books, we have them all. If you are referring to cutters' tickets, we don't keep cutters' tickets for four or five or six years.

Q. I am not referring to—wait a moment—do you keep any records of the number of units shipped of each style in your business? A. No, we don't.

Q. Did you ever keep such a record? A. No, we don't.

Q. I asked you, did you ever keep such a record? A. No, we have never.

Q. Now, whom did you sell this dress to over a period of years? A. A specific account?

1202

Q. Yes. A. I cannot say.

Q. How? A. I cannot say now.

Q. What is a hot number in your business? A. A number that reorders.

Q. Well, this number was the hottest number that you ever had, wasn't it, if it sold for three or four years? A. That is correct.

Q. And you do not remember who you sold this so-called— A. Perhaps to every retailer we may have been doing business with.

Q. That was during what period? A. To about a year ago, and for about three years prior to that. That is correct. We discontinued the number about a year ago.

Q. How many numbers do you make a year? A. Oh, somewhere between three and five hundred.

1203

Q. How many seasons are there a year? A. Really three, spring, summer and fall.

Q. You would not say there were five seasons? A. I don't think so.

Q. Would you say— A. Although I may say this, every month is a season—I mean things are constantly switching.

1204

Ben B. Hirsch—For Commission—Cross.

Q. You mean every month is a season? A. Every day is a season.

Q. You mean— A. Every day brings forth new business.

Q. Every day. Do you not design particular lines for the spring, light-colored merchandise and light-weight merchandise? A. It all depends—in November we leave a manufacturer—the type of stuff for certain territories in the country that we won't manufacture until May of the following year. I will refer to washables, for instance, that we will make in November for the southern trade that we won't start to make again until May of the following year.

1205

Q. What do you sell your washables for? A. \$6.75.

Q. What do you sell your silks for? A. \$6.75.

Q. Do you have the same type of silks, the same type of prints, the same colors for the spring as you have for the fall? A. Of course not, Mr. Weisman.

Q. We are agreed on that. A. Oh, sure.

Q. So we are agreed that you have at least two seasons. A. I believe we have three seasons, if you want to call it a season.

Q. I believe you have five. I want to see whether or not you believe we really have five. A. I figure you know the dress business, Mr. Weisman.

Q. You mentioned a few moments ago that you are in business every month. A. Every day.

1206

Q. That you have a different season every month. Wasn't that what you said? A. I don't know what you mean by seasons exactly, Mr. Weisman.

Q. Do you deny that the dress business is a seasonal business? A. Of course I don't deny that.

Q. Then it is a seasonal business. A. But the seasons—

Q. (Interposing) No, no—then it is a seasonal business? A. Yes, if you want to call it that way, certainly.

Q. You just said you don't know what I mean when I say that the dress business had seasons. Now, what did you mean when you said the dress business was a seasonal business? A. Naturally we cannot sell heavy-weight stuff in the month of July, nor can we sell light stuff in the winter months, or sheers or acetate, in light pinks and light colors, we certainly cannot sell them to local trades or northern trades, in the month of October and the month of November.

Q. So there are seasons? A. Of course there are seasons.

Q. Tell me what, in your opinion, the seasons are? A. Spring, summer and fall.

Q. Spring, summer and fall? A. Correct.

Q. Do you have any known differentiation between the fall and winter garments? A. I don't believe the dress business has a fall and winter.

1208

Q. You think that the fall business is the same as the winter business? A. Pretty much so.

Q. Well, what is the difference, if it is only pretty much so? A. Well, in the cloak and suit business of course you have fur trim.

Q. I am not talking about cloak and suit business, you don't sell cloaks and suits. A. No, we don't.

Q. I am asking you about your business. A. Not many excepting a new material may come in demand, a new color may come in demand—

Q. Well, now— A. —as far as the weights are concerned, you mean.

1209

Q. Let us see. Aren't your winter colors usually a little darker than your fall colors? A. For instance, black certainly cannot be blacker than black, can it? I have not heard of light and dark shades of black. We have black that we are selling right now in the month of August, and we will still sell black in the month of January.

Q. And you will still sell black all the year around. Don't you know that black is the absence of color, and I

1210

Ben B. Hirsch—For Commission—Cross.

have asked you about colors? You are an expert. How long have you been in the business? A. Twenty-eight years.

Q. Do you not know that black is the absence of color?

A. That is right, black is not a color.

Q. Then when I asked you about color being lighter or darker, then why do you have to run into black when you know that is not a color? A. About 80 per cent. of the stuff that is being sold in the industry is black, anyhow.

Q. As to textile, is it not a fact that the textures of the various merchandise used in the dresses are heavier in the winter garments than in the fall garments? A. I answered that, I said that. I told you that before.

1211

Q. That is a fact, is it not? A. Certainly.

Q. And you make up separate, different garments of the heavier kind for the winter, do you not? A. Well—

Q. Heavier merchandise, heavier materials? A. Do you mean for the fall? Are you talking about August or September, January, February or March? I don't know which. I said before we really have no winter season in the dress business. We have a spring, summer and fall season, and in the winter we are selling practically the same type of merchandise that we sell in the fall.

Q. Now, you stated before that you made about 500 styles a year? A. I said between three and five hundred.

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Q. So that would be from 100 to 166 a season, on the average; is that not so? A. That is about right.

Q. Now, how long do you employ your own designers?

A. We do have a designer, and assistant designer, and five sample hands.

Q. Do you make up original designs? A. I don't know what you mean by original designs. I don't believe anybody makes up original designs in the dress business.

Q. In other words, you think there is no such thing as an original design in the dress business? A. That is my honest conviction.

Q. And having that conviction, you think that everybody in the business copies from everybody else, or everybody else's merchandise is a copy of somebody else's? A. Not copies from everybody else, but copies of styles that are available, and data that is available to every manufacturer in the dress business.

Q. Do you know the difference between a style and an original design? A. I said before that I don't believe there is such a thing as an original design in the dress business.

Q. Do you know the difference between style and design as applied to the dress business? A. Well, I have been in the dress business for a long time. I think I know as much about it as anybody does.

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Q. Based on the long experience that you have referred to, do you know whether or not there is a difference between style and design in the dress business? A. I don't believe there is. I don't know what you mean by style and I don't know what you mean by design. To me, both of them are the same.

Q. That is what I want to find out, whether to you both of them are the same. A. I believe they are.

Q. And that is your best answer? A. That is correct.

Q. And you feel that the statement that style should not be protected is synonymous with the belief that design should not be corrected, since there is no difference between the two; is that right? A. No, I don't believe you have me correct. I said that I don't believe that there is originality in design or in style, call it whichever you please, in the dress business, and if there is such originality in it, we have a bureau, a government bureau, to go to for protection of property rights.

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Q. That was not my question, whether we have a government bureau. We will come to that in time. I want to know from you, Mr. Hirsch, with the large experience which you have claimed in the dress business, whether

1216

Ben B. Hirsch—For Commission—Cross.

you know the difference between design as applied to the dress industry, and style? A. I can't say that I can answer that, I don't know just what form—

Q. Don't you know? A. I don't know just what form you mean it in.

Q. Take it in any form that you like. I want to probe the operation of your mind. A. Do you mean trends of style?

Q. I want to find— A. (Interposing) Are you referring to—

Q. —I want to find out what you understand. A. Be specific, Mr. Weisman. I will be very glad to answer you. If you are referring to trend, like a Marget influence, or Princess influence, I can answer that definitely, that trends in the dress business—

1217

Q. Let me see, the trends of what—

Mr. Martin (interposing): Let him answer.

A. Trends of style.

By Mr. Weisman.

Q. Do you believe the trend of style is the same as the trend of the design? A. Well, what is the difference? I don't know what you are referring to.

Q. I want to know whether you think there is no difference. A. I don't understand what you mean by the difference in the style and design.

1218

Q. I don't mean anything. A. You don't mean the mechanical manufacturing of a thing, do you?

Q. I am going to start all over again. I want to find out what you mean. I want to find out from you, whether you know the difference, or whether you can see there is a difference between dress style and dress design? A. In style you have trends; designs are the trends.

Q. Well, if— A. I can't see the difference, and I am answering you as frankly and truthfully as I can.

Q. Well, in the— A. If you are referring to a trend, an influence, that is one thing. Anything else that you may be referring to, I don't know. If you mean a thing, whether it is a puffed sleeve, or wide skirt, or princess effect, or a low belt line, or a tunic dress, or a plain dress, or a gore dress—if you will be specific, I will be very glad to answer you. A hypothetical question like you are giving me is hard to answer because I don't know the variance you are referring to.

Q. Well, would you call a puff sleeve a design, or a trend, or a style? A. A puff sleeve is a copy of a Marget influence, for the sake of argument; something that 200 years ago, or 160 years ago, was worn definitely by everybody then, because it was taken after something that Miss Marget of Alevisia, or someone of that name, some name like that, wore then.

Q. Wait a minute. A. I believe it was Marget of Aloysious, or some kind of name like that.

Q. You do not mean Margot of Navarre, by any chance? A. That's it, that's the one.

Q. A sister of the King of France? A. I am not certain about the history, whether she was a sister of the King of France.

Q. You would not mind calling her Margot instead of Marget? A. If that is the correct pronunciation of it I accept it.

Q. How do you know Margot of Navarre wore puffed sleeves? A. Because I study the business I am in, the dress business, and in France— 1221

Q. (Interposing) Well, now, will you— A. —when France comes along, and I read in the newspapers, and I read in "Vogue" and "Harper's Bazaar," and when I see in the papers and all the other publications that are in Paris, that they are showing the Marget influence, and they are going to be made here, I make it a business, and find out what that is, or what the Margot means—

1222

Ben B. Hirsch—For Commission—Cross.

Q. As a result of that intensive study you made, you came to the conclusion that Margot was Margot of Aloysious? A. Well, it may have been Navarre, but I don't believe you are right about that, either—of Navarre --it is not Navarre, it is something else. It is spelled with an "A."

Q. You take it from me that Margot was the sister of Prince Henry of Navarre. A. That may be O.K., but I don't believe that is Margot of Navarre. Maybe we have somebody here that will give us a better definition.

Q. Aloysious was a saint. A. It is nearer to Aloysious than Navarre. I am referring to the one, that influence of Margot, the trend is taken from.

1223

Q. I am greatly interested in your study of styles and trends. A. O.K.

Q. And I would like to proceed in that inquiry a little further. A. All right.

Q. As I understand, your studies of style and style trends in the matter depend upon your reading of Harper's is that correct? A. Oh, that is just one of any number of them. You have Harper's you have Vogue's, you have the sketches that we are getting from the sketch makers and from the model makers and from the newspapers. There is plenty of stuff that is available, and plenty of styles that are available, as to what is being shown in Europe at this time. I will be very glad to show you, I have a file, I have a batch of them like that (indicating) of foreign importations here, of sketches that we are receiving, for which we pay, and which are available to every dress manufacturer in this market, reproductions of the various things that are being shown in Europe and that will be and are being manufactured by manufacturers here. If there is any such thing as copying, it may be done from the things that are being shown at the Europe showings, but even there, if you please, there is no originality of creation. If you have made a study of the

1224

manufacture of dresses in Europe, for style purposes, and I am referring to the couturiers like Chanel, Vionnet, Paton or Ballou or Schiaparelli. I am not referring to the Schiaparelli, I am referring to all the French couturiers over there—you will find just what styles or trends of styles may emanate from, and if there is such a thing as copying—if there is such a thing—it is developed, and definitely being done by the highest price manufacturers and everybody in the industry.

Q. Do you not know the difference between novelty and origination? A. I have maintained before that in the dress business, if you are referring to origination in the dress business, it is my honest conviction that there is no such thing, unless you are to take this desk and hang it on a dress in place of a flower, or take that electric fixture up there and hang it on a dress instead of a buckle, that might be origination, but the women of the country would not take to that kind of origination because it is impracticable, and they could not work with it. Every dress follows a certain silhouette of the woman, and you cannot get away from that.

1226

I can show you a stack of sketches like that, and that, of dresses (indicating). If you made nine millions of dresses there isn't a single feature of them that could be made, that a woman would wear, that is not incorporated in some of the sketches before, a dozen times before.

Do you know how many styles are shown by the mail order houses alone? If you go through a period of twenty-five years, and if you can develop one single element of a style that is different than anything they made before, and which files are available, because you can get them and I can get them, then you are a better man than I am. I cannot find them.

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Q. Well, I concede the latter statement. A. O.K.

Q. But I won't press it.

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Ben B. Hirsch—For Commission—Cross.

Mr. Weisman: Now that my good freind on the witness stand has given us an example of his bias and volubility, I object to that.

Mr. Martin: I object ~~to that~~ remark. He has not given an example of bias; he has simply answered a question asked him by Mr. Weisman.

Mr. Weisman: I ask that the latter answer, latter part of the answer be stricken out; it was not responsive to any question that I asked.

Examiner Bennett: What do you want stricken?

Mr. Weisman: I want the whole thing stricken, if your Honor will turn back—

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Examiner Bennett: What do you mean by the whole thing?

Mr. Weisman: Will you give me my last three questions?

(Last three questions read by reporter.)

Mr. Martin: Your Honor please, all of this is relevant to what Mr. Weisman was asking, and just because he does not like the answer he got—

Mr. Weisman: I liked it very much.

Mr. Martin: Then let it stand on the record.

Mr. Weisman: I rather enjoyed Margot of Aloysious instead of Margot of Navarre or Avignon.

The Witness: That's different, Avignon was the one. I told you it was with an "A," that's the girl. that's the baby.

1230

By Mr. Weisman.

Q. Now, you have got it. A. Now I have got it.

Q. But Avignon is not a woman, Avignon is a place.

A. All right, then it is a place. Margot of Avignon, I told you it started with an "A."

Q. As the result of your studies to get style, the closest you could come to Margot of Avignon was Margot of Aloysious? A. It was nearer and closer than Margot of Navarre.

Q. Wait a moment. A. I started with "A."

Q. Don't you know that Avignon is a province of Navarre, that all France was divided into provinces and Avignon was a city in Navarre—don't you know that with all of these studies that you have made? A. I remember my Gaul and that was divided in three parts.

Examiner Bennett: Let us have some work done; let us have some work done; let us not wander all over creation.

Mr. Weisman: I agree with your Honor. I am sorry. I did not want to stop this witness as he went on.

Examiner Bennett: Well, let us get through. 1232

Mr. Weisman: I thought it might help.

Now, will you go back and read my question.

(Last question read.)

Mr. Weisman: I move to strike out the answer.

Examiner Bennett: As far as the Examiner is concerned, he is not going to strike out anything from the record. I want the record to stand, to show the character of the examination that was asked.

Mr. Weisman: And also the character of the responses.

Examiner Bennett: The whole character of the testimony.

By Mr. Weisman.

Q. Well, having this belief that you have, that there is no origination in style, or in design, then, I take it you also have the belief that no design is entitled to protection against being copied; is that right? A. Well—

Q. Can you not answer the question "yes" or "no"? A. Mr. Weisman—

1234

Ben B. Hirsch—For Commission—Cross.

Mr. Weisman: May it please the Court.

Examiner Bennett: All right.

Mr. Weisman: Will your Honor not direct the witness to answer these questions "yes" or "no."

Examiner Bennett: He may answer "yes" or "no," but he may add such explanations as will show what he means by "yes" or "no."

Mr. Weisman: I submit that if there is an explanation to a question, the proper and orderly way would be for counsel for the Commission to ask him as to such questions.

Examiner Bennett: Let us find out.

1235

Mr. Weisman: If he wishes to explain—

Examiner Bennett: We are going to let him explain, if it is relevant; if it modifies the categorical answer. And you know that a categorical answer to a question that is asked by a cross-examiner never does give the whole truth.

Mr. Weisman: Well, I—your Honor has a much greater experience than I have; I won't subscribe to it; I will accept it, if your Honor state that it is his Honor's conclusion from the wealth of your Honor's experience.

Examiner Bennett: It is a conclusion from experience.

1236

Mr. Weisman: That is what I say. Now, with that understanding with the Court, perhaps I won't urge my objection so strenuously.

Now, may I have the last question?

(Last question read.)

A. Of course not. I have said that if there was such a thing as originality in style there was a governmental bureau for the protection of property rights to the owner thereof.

Examiner Bennett: That may be stricken. Will you answer the question?

(Last question read.)

A. Oh, I have no such belief. I believe that an originator is entitled to protection.

By Mr. Weisman.

Q. Have you ever seen an original design? A. No.

Q. In your twenty-eight years how many designs have you seen? A. Hundreds of thousands.

Q. And among these hundreds of thousands, it is your statement that none of them were originals? A. Pretty much so. 1238

Q. What do you mean by "pretty much so"? Did you not just say no? You did not say "pretty much no"? A. I did say no.

Q. And it is your belief that these various styles that you employ designers to make up, none of them are originals; is that correct? A. Pretty much so. There may be a single incident, I don't know. I may have come across something that I did not see—in other words, that I did not examine microscopically.

Q. You do not think that a design has to be examined microscopically, do you? A. Of course not.

Q. Well, why did you say that you could not answer because you did not examine them microscopically? A. You asked me if in all of my experience I did not see a single instance of originality in a dress. 1239

Q. And you said no. A. I answered mostly no.

Q. And out of the hundreds of thousands of designs that you saw produced every year in the American market, your statement is that there was not a single original design among the lot of them? A. My statement is that I don't ever remember seeing a single original design, original creation, in a dress in this market.

1240

Ben B. Hirsch—For Commission—Cross.

Q. Well, if you saw it would you remember it? A. I don't ever remember seeing such a freak.

Q. Now, in other words, your statement is now that if a dress were an original design it would be a freak? A. Of necessity, yes.

Q. What do you mean by "of necessity"? A. Because every angle, or every possible part of a dress, has been made time and time before, and if there is such a thing, and as I said before that the only way that you could create an original dress in this industry would be to take this desk and hang it on, instead of a flower, or take that chandelier and hang it on instead of a buckle, but that would be so idiotic that the woman could not wear it.

1241

Q. Well, holding this opinion that you do, then you also hold the opinion that there is never an originality in design of dresses; is that not so? A. I haven't seen any in my experience.

Q. I asked you before, and I hope your Honor will pardon me when I use this word, which is a word used in the vernacular of the business, and which was used first by the witness, and I take it from him in this instance; what is known as a "hot number," and that is the word which you understand as well as I do, and which we have both used, and you said that it was a "hot number" because it was a number that had received a great many reorders? A. Yes, sir.

1242

Q. Reorders in your meaning that there has been a demand acceptance of the dress, is that correct; is that the way you understand it? A. Correct. Reorders unquestionably mean that there has been a demand acceptance of the dress.

Q. What makes the consumer accept one dress as against another dress in your opinion? A. Trend, set-up, comparison, for the whole world, not for America alone.

Q. When you design your line, you copy or you adapt the general style trend; is that so? A. Yes, sir.

Q. By "style trend," you may have a trend—first, you mean if the trend is, for example, a high waist and a long skirt, that is a trend of style? A. Yes.

Q. Design, on the other hand, is an adaptation of the style trend; is that so? A. Nobody has explained to me what "adaptation" means in the dress business. I have heard the word before but I have never understood what it meant. I am frank to tell you that I have never understood what was meant by that word.

Q. You do know what the adaptation of a style means? A. Unless it means copying.

Q. Do you or do you not? A. I believe it means copying.

Q. In your mind the adaptation of a style to a particular design is synonymous with copying the original into another garment? A. Not the original, not the original, taking the various units and the parts of the dresses, and assembling them together and calling it an "original."

1244

Q. How often do you go abroad for the purpose of ascertaining, personally, the style trends in Paris? A. I do not go abroad at all, but I subscribe to several services that give me that.

Mr. Weisman: I ask that the latter part of the answer be stricken from the record.

A. I have never been to Paris.

By Mr. Weisman.

1245

Q. Never in all of your twenty-eight years? A. That is correct.

Q. You never went abroad to observe style trends? A. That is true. I am sorry to say I have not.

Q. You say you are sorry to say you have not? A. Yes.

Q. Would you have known better if you had gone over there? A. Well, I think I would have accomplished perhaps more in my business had I been able to follow myself

1246

Ben B. Hirsch—For Commission—Cross.

all of the styles that Paris sets up as being in vogue for that particular year or season, or for the developing of the trend.

Q. Do you not know that the Parisian woman's silhouette is different from the American woman's silhouette? A. Of course not, she is still a woman. Every woman has what every woman has although it may vary here and there.

Q. Did you ever hear the fact stated that the American woman is more lissome than the French woman, she is also more athletic, she is more of an outdoor woman, and the silhouette of a French woman if copied for an American woman would not find ready consumer acceptance? 1247 "Yes" or "No." A. Well, she is still a woman. She has the same hips and she has the same waist and she has the same limbs, and she has the same—well, she has the same everything else.

Q. That does not answer my question. My question can be answered "yes" or "no." Did you ever hear that, or did you ever not hear it? A. Why, make it more explicit.

Mr. Weisman: I think you can answer that question like it is.

Examiner Bennett: Read the question.
(Question read.)

A. I cannot answer eight questions "yes" or "no."

1248 *By Mr. Weisman.*

Q. I never asked you eight questions. A. You are asking me eight questions now.

Q. The question is whether you ever heard that, "yes" or "no"? A. You are asking me eight questions, you are asking me whether she is lissome, whether she is athletic, whether she has the same silhouette. What are you asking me?

Q. All of those things. A. I cannot answer that "yes" or "no." Some of them I have heard, yes; some of them I have not heard.

Q. Tell us which one you have heard and which one you have not heard.

Examiner Bennett: Ask it in detail.

By Mr. Weisman.

Q. I would like for you to tell me what you have heard and what you have not heard. A. I have heard that the American woman is athletic. I have heard that the French woman is more style inclined, that she is gaudier, that she likes, perhaps, stronger colors and a little bit more bold colors than the American woman, but as far as style or silhouette is concerned, if it is a French woman, or if it is an American woman, or if it is a woman from Australia, or if it is a woman from Germany, or if it is a woman from England, she is still a woman whether she is in France, England, Australia, America, Germany, or wherever she may be unless she happens to be in the jungles, and a jungle woman they do wear entirely different styles, because she would simply wear a sheath.

1250

If she lives in any of those places she will wear a broad skirt if they are wearing broad skirts, and she will wear a pleated sleeve or a full sleeve, and she will wear a pleated dress or a plain dress, and she will wear a plain bodice or a pleated bodice, and they will wear one buckle or two buckles, or they will wear a tie or something else in place of a buckle or in place of a flower, they may wear a flower, but all of these things are the same things, and they have been from time immemorial. In other words, outside of the woman who lives in the jungle and wears a sheath, they will wear just about the same things all over the world wherever style is known. It does not make any difference what the nationality is.

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1252

Ben B. Hirsch—For Commission—Cross.

Q. Does your design consist of entirely copying what somebody else has made? A. In what somebody else has made 100 per cent.; 100 per cent. it seems to me.

Q. Your organization is 100 per cent. copyist; is that correct? A. Yes, 100 per cent. copyist, and—

Q. Now, going to something else.

Mr. Martin: No, let him finish the answer to the question.

By Mr. Wetman.

1253

Q. I thought you had finished. A. One hundred per cent. copyist of something that has been made before, and—yes, of stuff that has been made before. When I said “stuff,” I am referring to the various parts of the dress, whether they were made in 1902 or in 1830, or whether they were made in 1936, it makes no difference, we have the files available, and we go to these various styles and take a sleeve out of one fashion magazine, or a waist out of another mail order book and we take a neck out of a fashion magazine that comes from Paris, and we assemble them together.

I cannot conceive of an original creation and I would never have the temerity to assert that I am entitled to a property right in that because we assembled it together and call it “Mammy.”

1254

Q. Call it what? A. An original creation.

Q. That is not what you said. What did you say you called it? A. No, I was referring to the slang term. I was using that to mean when we put that altogether, and—as in the slang song, they put the words together and called it something. They put this thing together and that thing together and we would call it “Mammy,” but we would not say we had the right to a property right in it.

Q. Will you repeat that statement that you were talking about? It was not clear to me. A. I was thinking of a

song that Al Jolson sang about Mammy, and he said that the "M" stood for mother, and the "a" stood for adoration, and the "m" stood for something else and when he put all of those words together it spelled "M-a-m-m-y." It just ran through my mind as an accurate description of this very thing, and when we put all these things together and have a dress, I cannot conceive of having the temerity on my part or the temerity on anyone's part to call that an original creation on which and to which they could assert a property right.

All we do is go through the files, and we can get all of these things out of the files, and they are available files that are open to any manufacturer in the industry, and after we get a sleeve from this source and a waist from that source and a dress from the other source and we put it altogether and call it a creation, I do not see anything on earth that would warrant anybody in having a property right by which they could say that somebody else should not have the right to make that same dress.

1256.

Q. You said something about 1830 sleeve; have you any dress with sleeves as of 1830? A. We have—recently, of course, it may be 1830 or 1850—I refer to the files that are available, and there are plenty of files available, and they are available to me and they are available to you and to every manufacturer in the industry down at the public library, and plenty of them you can get from the sketch people, and you can get them from the model makers, and you get them from the Sears-Roebuck catalogs and from the Montgomery Ward & Company catalogs, every detail that goes into a dress, I repeat, every detail is available in some sketch some place. All we had to do is simply to go to these available files that are open to every manufacturer in the dress industry and take this sleeve here and the waist there and the neck there and the skirt some other place and a buckle here and a flower there, and a combination here, and put them all together, but we do not

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Ben B. Hirsch—For Commission—Cross.

have anything that is original, we have simply a compilation of something that has been made many years before. There is nothing new in the creation of women's styles as I see it, unless you might go into the jungle some place, and I do not think you could get women to wear the sheath that women do wear in the jungle. After we have got this thing put together, taken these things from these common sources that are open to everybody, there is certainly nothing there that would entitle us or anybody else in the world to a property right in it which would exclude everybody else from making it.

1259

Q. Have you ever heard of something called inspiration? A. Of course I have.

Mr. Weisman: If your Honor please, it is now 4.30 and I would ask that we adjourn to to-morrow morning at 10 o'clock A. M.

Examiner Bennett: We will recess this hearing until 10 o'clock to-morrow.

(Whereupon, at 4.30 P. M., July 20, 1936, the hearing was adjourned.)

Room 901, 45 Broadway,
New York, N. Y., July 21, 1936.

1260

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same appearances.)

Examiner Bennett: We will be in order, please. You may proceed.

Mr. Hirsch, will you come around and resume the stand, please.

BEN B. HIRSCH resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Hirsch—

Examiner Bennett: One moment. I want to ask the witness one or two questions.

By Examiner Bennett.

Q. Mr. Hirsch, I see that somebody who seemed to belong to your organization left a whole lot of matter in here, in my custody, yesterday; what was that for? A. I was asked by the Court to bring in all of my orders that I could lay my hands on.

1262

Q. Asked by respondents? A. Asked by counsel.

Q. You brought it for him, did you? You brought it at his request? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. You are turning it over to him? You want him to have it? A. Well, I don't want to turn it over to him unless he—

Q. Do you want to make it available to him for the purposes of this case? A. Yes, sir.

Examiner Bennett: All right. Mr. Weisman, you may resume.

Mr. Martin: If your Honor please, at this time I think Mr. Ballon, who is personal attorney for Mr. Hirsch, desires to make an appearance.

1263

Examiner Bennett: In that case, let him make a special appearance in the record.

Mr. Ballon: I desire to enter the appearance of Hartman, Sheridan & Tekulsky, 285 Madison Avenue, New York City, N. Y., by Charles Ballon, New York City, appearance being specially for the wit-

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Ben B. Hirsch—For Commission—Cross.

ness Ben B. Hirsch, and perhaps others to-morrow.
Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. Mr. Hirsch, you do employ designers and sample hands? A. Yes, sir.

Q. Would you tell us what are the duties of your designers—I withdraw that. I take it that you—from your testimony—that you employ one designer? A. Correct. And one designer's assistant.

Q. Would you agree to co-operate with me and try to confine your answers to the questions that I ask? A. Yes.

1265 Q. Now, you employ one designer? A. Yes, sir.

Q. You just volunteered the information that you also employ a designer's assistant? A. Correct.

Q. How long have you had in your employ a designer?

A. In the dress business for eight years, in the Melba Dress Company, not the same party.

Q. You have changed your designess from time to time?

A. Yes, sir.

Q. During a period of eight years did you ever have more than one designer? A. No.

Q. How many different designers would you say were employed by the Melba Dress Company successively during this time?

1266

By Mr. Weisman.

Q. I believe the last question that I directed to you was as follows, in substance: During this time how many designers have you had successively; in other words, seriatim? A. In all, three. One at a time.

Q. One at a time? A. One at a time.

Q. How many—I withdraw that. Why did you change your designers? Let us go into that first. A. Probably on account of inability. They may have slipped down on

their job. They were not doing as well, in my opinion, as they could. The last man that I let go I may have had other reasons, misgivings, and so forth, in connection with that party, and I let him go and changed for somebody else. I think that I thought at that time that it was wise to do so. I changed to somebody else whom I thought would be better.

Q. When you say "misgivings," do you mean misgivings as to his ability? A. There were other things involved as well as ability.

Q. Such as loyalty to the firm? A. Correct.

Q. Right? A. Right.

Q. In other words, you felt that your last designer might be divulging certain of the things that he was doing for you to others? A. No, it was something else.

Q. I see. A. Yes.

Q. Now, you let some of them go because you thought you could get a successor with greater ability; is that right? A. Yes.

Q. Greater ability to do what? A. To do the job.

Q. What was the job? A. May I take some of the papers that I have here in connection with your last question, to explain just what it is?

Q. Wait just a moment. A. What?

Q. Wait just a moment. A. Very well.

Q. Is it that you cannot tell us at this time the answer to my question? A. No.

Q. No? A. It is not that. I can tell you the answer here to that.

Q. Then, will you please tell us about it without going away? A. Very well. We would give him sketches from concerns that we subscribe to to copy dresses from those sketches and make samples from those sketches that we would like. It was his duty to copy those and make in accordance with our requests, with our ideas of what we could sell. It was first his duty to make, and is his duty to

1270

Ben B. Hirsch—For Commission—Cross.

make original samples from those sketches or from the sample that we might submit to him ourselves, or from the dresses that we may submit to him ourselves, or from—that we buy from model makers or buy in the open market.

It was his duty to make an original sample or samples so that it would fit properly.

Our prior designer, the one just before the one that we have employed at this time, also brought trimmings for the entire manufacturing end of our business, and this one does, too.

1271

He has charge of the production end of the business, the other one; and when I refer to the production end of the business I mean the mechanical manufacturing end of our business.

I think that covers it pretty well.

Q. When you obtained the sketch of a dress you say you gave that to your designer to copy? A. Correct, to copy from the sketch.

Q. What do you mean by "copying": to adapt it to your business? A. To copy it for our business: for our purposes.

Q. In other words, you would see a sketch, I take it, and the sketch in its exactitude was not exactly what you wanted? A. That is correct.

1272

Q. So you would say in words or in substance to your designer: "Here is a sketch, now, I think if you would apply your brains, your originality, your creative ability to this copy you could get something which would be better adapted to our trade." Is that correct; in words or in substance, is that correct? A. No, it is not correct. I use my own experience in connection with the business, too. He not only has one sketch, but he is getting a lot of sketches from various sources each and every week.

We subscribe to a number of concerns whose very business it is to supply us with sketches, either from imports

or from domestic sketches, of their own in making. In other words, that they make up themselves.

That is their business. We subscribe to those. We get a number of sketches and we will tell our man, "I will want you to take this, Mr. Grunow, take that collar from that sketch and take that skirt from on there, and take—then use last year's No. 503 for the sleeves, and use this buckle, and use something else from something else, and we may tell him to take a flower, or some sort of an ornament from something else that we have used before, that we have seen before." Then we assemble the whole business and there you are—a dress.

Q. What are you trying to assemble? A. We are assembling a dress.

1274

Q. What you are trying to assemble is not your own design? In other words, is it not the product of your own designer's ability, and beyond that do you not also use your own ability in that field, and you give him certain ideas that you have? A. Correct.

Q. These ideas that you have? A. Yes.

Q. And these ideas that he has, plus ideas generated in his own mind or in his own opinion takes substance in your ultimate style number as designed by you and by him? A. Yes.

Q. When this ultimate style number is designed and made up, then it is a product of your creative genius and the creative genius of your designer— A. Not exactly.

1275

Q. Pardon me, I had not finished my question. I thought we were going to agree that you would wait until I finish the question, and I will wait until you finish your answer. A. I am sorry. I thought you had finished.

Mr. Weisman: May I have the previous part of the question again in order that I might finish it?

The Witness: I think I understand what you want.

1276

Ben B. Hirsch—For Commission—Cross.

Mr. Weisman: No. I have not finished the question yet. I will just ask the reporter to read the first part of it so that I might pick up my train of thought.

The Witness: Oh, I see. You want to remember what you said.

Mr. Weisman: Yes.

The Witness: O.K.

(Question read.)

1277

Q. (Continuing) —but you and your designers have drawn upon—in this case your designer—but you and your designer have drawn upon past things that you have seen, as you say, you may have taken a collar from one, and taken a sleeve from another, or a line from another, from the third; is that correct? A. Well, if I may answer—

Q. Yes. A. Well, it is the result, all the result of things that we have taken from.

Q. That you have seen? A. Yes.

Q. But the assembly of it I should say is something which you and your designer give birth to, speaking mentally, of course, and not physically? A. It would have to be. Assembly, yes.

Q. Yes. A. Yes.

1278

Q. In other words, when you have one of your style numbers that is such a style number as you have conceived during your efforts, and is the result of and upon the fact that you have seen parts of it elsewhere, but nothing before totally in that particular arrangement. A. That is right.

Q. That is what you meant yesterday when you stated you had never seen something that was wholly new and original? A. That is correct.

Q. In other words—and I just want to get this straight—when you have one of your style numbers that is such

a style as you have conceived, drawing upon the fact that you have seen parts of it elsewhere before, but never totally in that combined arrangement as you finally produced?

A. You are right.

Q. Furthermore, you had seen, however, such ideas you have described in your previous answer, which you took and put together into something which had never been put together in that particular conglomeration before whatsoever; is that correct? A. I can hardly say that. I can hardly say that, Mr. Weisman.

Q. All right, let us get at it in this way. We will just take our time and we will ultimately get there. A. Perhaps.

1280

Q. When you take a coat from—or, rather, a collar, and when you say to your designer, "I think the collar of last year's No. 507, together with the waist of two years ago, No. 402, we will take them and apply all of them to the style trend as shown in "Vogue" as to what Paris is doing, and we will make up a garment," and you do that. Have you then something new; have you ever before seen a garment exactly made up thus and thus? A. I cannot say whether I have seen, but the changes are that it may have been made that way. There are only a certain number of assembles that you can put together.

Q. I see. A. Is that an answer?

Q. Well, that is your answer.

Mr. Weisman: Now, off the record, let me say 1281
this to you, Mr. Hirsch, and I think we will get along a little better. When I ask you the question, if you will just answer the question that I am asking you, I think that will be fine. You are not supposed to ask me the question. I am supposed to ask you the questions and you are supposed to answer the questions.

1282

Ben B. Hirsch—For Commission—Cross.

Mr. Martin: Quite true, but, on the other hand Mr. Weisman, let me call your attention that you are not supposed to answer the questions. The witness is supposed to answer the questions and you are not supposed to answer them for him. Suppose we just let it go at that.

The Witness: I will answer them if you will ask them so that-I can.

Examiner Bennett: Proceed, gentlemen. We are just taking up time. Discussions off the record will be directed by the Examiner, gentlemen, also.

1283

By Mr. Weisman.

Q. In order to get these ideas, you testified yesterday—first, by the way, what is the duty of your sample hands?

A. Just to follow the instructions as to the—to mechanically put together the dresses.

Q. What you and the designer conceive? A. What we give them to make.

Q. Does the designer and the sample hand—designing staff and sampling staff—is that an integral part of your business? A. Is what a part of what?

Q. Is your designing staff and your sample room staff an integral part of your business? A. It is.

Q. It is? A. Yes.

Q. It costs you money to maintain it? A. Yes.

1284

Q. The purpose of its maintenance is so that in your business you may ultimately maintain, so that you may offer the same for sale, dresses which you think are appealing to the buying public? A. Yes, sir.

Q. Now, when you—I take it that when you make up such a dress which is born in your mind and in your designer's mind—by the way, I will withdraw that. A. What?

Q. How many dresses would you say you make up during a season: that is, which are the product of your know-

edge, skill, creative genius, in putting together with your designer something that you think will find a consumer acceptance? A. How many?

Q. Yes, how many are there on your line? A. As I so testified yesterday, that we make between 300 and 500 dresses a year.

Q. That you make up? A. Well—

Q. Do you? You know what I mean. It is common in the industry. A. Samples in the line, do you mean?

Q. Yes. A. Yes.

Q. What I am trying to find out is whether or not all of the things that you tell your designer to make up, or that he makes up apparently without being told that he creates, whether or not they are all dresses that go on the line. In other words, do you not sometimes abandon certain of your samples because you think, after they are made up, that they do not sell, or find that out, and you do not put them on the line? A. Yes, we do abandon several, of course. We abandon them for various reasons.

1286

Q. What I want to find out from you is what, not with exactitude, but just your best guess, and I know it is a common thing in the industry—what proportion of the dresses that you so create with your designer, that ultimately finds their way onto the line, or what percentage you would say that you finally abandon because when they are finished you come to the conclusion that while the idea was a good one in your mind that when it is finally thoroughly executed and put into the materials it is not likely to sell? A. Well, Mr. Weisman, in the first place, we do not create, I said that before, but if you ask me what number we abandon, I will say that we do not get more than 25 per cent. of the dresses that we put on into production.

1287

Q. In other words, out of—if you have a lot of 100 dresses that means that you have probably experimented with 400 to produce this list of 100, and that you have

1288

Ben B. Hirsch—For Commission—Cross.

had to abandon and put out 300 off of your line? A. It means that we have not sold enough of the others, so that we do not cut them—may I amplify that?

Q. No, no, no. That is enough. That is enough. Just answer my question now, and we will get along a lot faster. A. All right, but that does not tell the whole story.

Q. I just want to ask you another question. A. All right.

1289

Q. When you do not get any of these styles onto your line, and in sale, the work and the money and the material and the hours and effort that you have put into them is a loss; is that so? A. Correct. It is just too bad.

Q. In the exercise of your business, you hope, if your business is successful, to make up that loss by the sale of the ones that are successful? A. Correct.

Q. So that the successful or selling numbers of the line must carry along all of the expense of your experimentation so to speak in your business? A. Correct.

Q. I take it further that if, as and when you design such a number which is on your line, and which is the product of your assembly, since you seem to find objection to the word "creation," you then give that a style number? A. Yes.

Q. That is known as style, let us say, for example, 507 of the Melba Dress Company. A. Yes.

1290

Q. I take it further that it is your economic philosophy, or industrial philosophy and belief, that anybody in the business is free if they see fit to copy that particular style number in its exact similarity as you have got it up, and sell it? A. That is correct.

Q. I also take it that you know that the Guild thinks that under such circumstances you would have some proprietary interest in that assembly? A. I believe the Guild takes that assumption. I do not know for a certainty.

Q. I take it also from your testimony that you believe that there is really nothing in the world that is new in so far as dresses are concerned, since women have always worn a covering? A. Yes, almost always.

Q. Therefore, since dresses are, in the main, only a variation of a covering, that there cannot be anything new about them? A. In a way; yes.

Q. I see. A. Yes.

Q. You do not hold to the belief that a woman buys a dress, perhaps, for the aesthetic value of the dress; that it may tend to beautify her? A. She probably buys it only for that purpose.

Q. She buys it only for that purpose—to beautify her? A. Yes, she hopes it will.

1292

Q. We have new styles of beauty? A. Well, that is a rather broad statement. New styles of beauty. What do you mean by that? Women are women.

Q. Do you not know that styles in beauty change from time to time just like anything else? A. Referring to cosmetics or referring to dresses?

Q. Referring to pulchritude in the female being. I mean to say that may have been deemed beautiful in a woman ten years ago is not deemed to be beautiful to-day. A. Cleopatra had her own sense of pulchritude and imagination just the same as the present-day woman, I dare say. From the pictures of her she did pretty well.

Mr. Martin: I object to that.

The Witness: I can amplify that if you want.

1293

Mr. Martin: I object. I think this is getting into an abstract line of inquiry which will not get us anywhere.

Examiner Bennett: I will sustain the objection.

By Mr. Weisman.

Q. When you take and assemble such a dress— A. What is that?

1294

Ben B. Hirsch—For Commission—Cross.

Q. When you take and assemble such a dress, it contains a number of individual items following the particular style trend of that season, and you do not admit that you have created anything? A. That is right.

Q. What do you mean when you said yesterday that you were not opposed to the protection of original styles? A. You asked me whether we were opposed, as an organization; you asked me about it in reference to the popular-priced dress group, whether our organization was opposed to the creation of dresses, and I said no.

1295

Q. No, no, wait a minute. Now, just let me say this to you off the record, if you will follow my question carefully, and not try to go into a discussion of it, or to try to ask me what I am telling you, I think we will get along a lot faster.

Mr. Martin: Your Honor, the objection to such a statement by counsel to the witness is perfectly obvious.

Examiner Bennett: Yes. Sustained. Gentlemen, we do not have off the record in this hearing without my direction.

By Mr. Weisman.

1296

Q. You made this statement to me yesterday; it is in the record. You said: "We are not opposed to the protection of original styles," referring to your organization. Did you say that, and is that a fact? A. That is correct. That is correct. What about that?

Q. Now, I would just like for you to tell me—please do not ask me the questions and we will get along faster—since your organization is not opposed to the protection of original styles, what in your organization's opinion, in view of the opinions that you have expressed, which I take it are the opinions of your organization, would be an original style?

Mr. Martin: We object to going into all of this again. This has all been gone into by Mr. Weisman before, and it is certainly not proper cross-examination. It is simply a re-hash of his previous cross-examination, anyhow, and needless repetition.

Mr. Weisman: No, I do not think so.

Mr. Martin: Now, I thought we had agreed not to interrupt one another. It is certainly not proper cross-examination.

Mr. Weisman: If your Honor please, I certainly think that this is proper cross-examination if there ever was proper cross-examination of a witness. I would prefer to have this argument made off of the record unless the Court wants it on.

1298

Examiner Bennett: I will direct what goes off the record.

Mr. Weisman: Very well. I think we have a most unusual witness; I think the Court can readily appreciate that in view of this situation. I think I am entitled to probe a little deeper than ordinarily would be the case, in such a case as we now find with a witness of this type.

Mr. Martin: I do not see anything extraordinary about this witness. He is just a regular witness. I do not think that comment is justified.

Examiner Bennett: Well, I think the answer of the witness speaks for itself. I shall sustain the objection to any further interrogation on that.

1299

I think it has been gone into very fully. Proceed.

Mr. Weisman: Exception.

Mr. Martin: If the Examiner please, there was scarcely anything on direct examination covering that line of inquiry, if anything, as I recall it. Certainly, there was nothing on the record that would justify such as extended an examination as this.

1300

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Mr. Weisman: Of course, when a witness is on cross-examination with reference to something that he has said on direct examination, then, certainly, the cross-examiner is not limited strictly to the range of the direct examination.

Mr. Martin: That is very true, but he cannot take up something new.

Mr. Weisman: I think that is correct, but I thought we had an agreement before we started in this morning that we were not going to interrupt each other. I had not finished my statement and I should like to be able to do so.

1301

Mr. Martin: I thought you had finished. Certainly, I do not desire to interrupt you.

Examiner Bennett: I can settle the matter now. There is no use of carrying this discussion any further. The decision has been made in this case. There is no use discussing it further. Proceed with something else.

Mr. Weisman: All right. I will not discuss it further.

Examiner Bennett: No. Proceed.

By Mr. Weisman.

Q. What line have you now? A. \$6.75 wholesale.

1302

Q. When did you open that line? A. Oh, in the last ten days.

Q. Last ten days? A. Yes.

Q. How many numbers would you say were on that line?

A. About ten velvets and about fifteen or eighteen—about twenty-five numbers.

Q. I do not care about the breakdown of them but just the total quantity. A. I would say about twenty-five.

Q. About twenty-five? A. Right.

Q. When were these numbers designed? A. Designed by whom?

Q. You. A. Assembled, you mean, or designed?

Q. Let us agree that you are going to call it assembled, and I am going to call it designed. You may, in answering the question, when I use the word "designed," not quarrel with me but you will think what I mean is what you have denominated as "assembled."

Mr. Martin: I object to this, your Honor. Let him go ahead and ask the question. As to setting up a series of speculations in the witness' mind in regard to a series of speculations in his own mind, I think that is highly improper. Where can we possibly get with that?

Mr. Weisman: This witness is not supposed to ask a question. 1304

Mr. Martin: Nor is counsel supposed to answer the question.

By Mr. Weisman.

Q. When did you assemble them? A. Within the last month.

Q. In other words, within the last month you have a complete new line which consists approximately of twenty-five dresses? A. Right.

Q. You are offering them for sale to the buyer for the fall trade, buyer or buyers? A. Yes.

Q. When before that did you have another showing of a line? A. We make samples constantly. We have no official opening or official—I will call it official opening. We do not have that. We just keep on putting new things on the line all the time. There is no official or set time for any opening. 1305

Q. Do you give the numbers on your line consecutive numbers? A. We do, excepting that we split them up into velvets. We will run one number, for instance, and in ensembles another number and dresses another range.

1306

Ben B. Hirsch—For Commission—Cross.

Velvets might be under eleven hundreds. Ensembles might run from three hundreds, dresses might run from eight hundreds.

Q. In your present line that you are showing, in your opinion when was that line designed? A. Within the last month.

Q. All of it? Every dress within the last month? A. Practically so.

Q. Do you mean to say that some of them you did not design two or three or four or six or seven months ago?

A. They might have—we might have designed, we might have a very few dresses—what do you mean by this design? I cannot answer the question in such a form.

1307

Mr. Martin: Are you making a distinction between designed and assembled?

Mr. Weisman: The witness understands the question.

A. I said before they are assembled numbers, and they might have been designed two or three years ago.

By Mr. Weisman.

Q. No, I mean as an entirety, as the dress is to-day on the line. A. That is a new fall line. That is correct.

Q. Completely new? A. What do you mean by completely new?

1308

Q. Did you have some of these dresses in your spring line? A. Very similar to them, yes.

Q. I didn't ask you whether you had any one very similar. I want to know whether you had any of these exactly the same? A. No, no.

Q. Do you want this record to show, and do you want this Court to believe, that each and every one of those dresses—

Mr. Martin: I object, your Honor.

Mr. Weisman: Let me finish.

Mr. Martin: I object to the form of the question.

By Mr. Weisman.

Q. (Resumed) Each and every one of these dresses are completely new in so far as design in its entirety is concerned, with the understanding that you mean of assembly and I mean of design, they are all new dresses? A. No, there are a few new dresses, and any—

Mr. Martin: I object to this as improper cross-examination, your Honor.

Mr. Weisman: I submit it is entirely proper, as will be developed in a few moments, subject to connection that I am about to make.

1310

Examiner Bennett: You may save your exception.

Mr. Weisman: Thank you.

Examiner Bennett: But I think you are going further into details of this.

A. Within probably the last few weeks, if it is not a month, it might be six weeks.

Q. Yes. A. There are a couple of numbers of our line that go further than we run last year, with a change in the embroidery, with which we have nothing to do, because that is the embroidery—

1311

Q. Why do you make so many new dresses for this line?

A. We are going into a new design.

Q. Why do you have to make new dresses for a new design? Why cannot you sell the same dresses you sold last season? A. Because the customers won't take last season's dresses.

Q. Do you know why the customers won't— A. (Interposing) Yes, right, I do know definitely why, because

1312

Ben B. Hirsch—For Commission—Cross.

of the new showings in Paris, developing a new trend, and we are every one of us manufacturers in America, irrespective of whether we make 99.50 stuff or 2.87½ stuff.

It is working on foreign trends from the stuff that has been shown in Paris, by Schiaparelli, by Patou. I can give you a list—

Q. (Interposing) You don't have to give— A. (Interposing) I have fifty of them to give you of all of the Paris showings. That is why the high-priced makers were at the showings, buying samples over there so they could go ahead and copy over there. I am referring to Lelong, Lanvin, Schiaparelli—

1313

Mr. Weisman: I do not care to object to this if my friend wants all of this in the record, to burden the record; I won't object. I do not think it means anything. It does not add anything to the weight of the testimony.

Mr. Martin: Your Honor please, he asked a question.

Mr. Weisman: It is all right with me.

Examiner Bennett: You are conducting this cross-examination.

Mr. Weisman: All right.

Examiner Bennett: You may go ahead.

Mr. Weisman: I would much rather have him go on and object than have a long lengthy argument with my adversary.

1314

A. (Resumed) Alix—I do not know whether that is the way to pronounce it—Vionnet, Chanel, Paquin, Piquet, Fravieurement, Maggy Rouff, Patou, Goupy, Molyneux, Paray, Rochas, Jodelle, Dormay, and I believe there are a lot more. Those are the best couturiers in Paris to whom the American manufacturers have been going for styles.

Then we have here concerns like L. B. Wood, who brings over the original imports and rents them out to manufacturers for copying purposes, and in the main to high-priced manufacturers.

By Mr. Weisman.

Q. You know that the Guild does not protect copies of foreign merchandise, do you not? A. I do, as a matter of fact they do protect—

Q. No— A. —they do protect foreign merchandise.

Q. Do you or do you not know that? The answer is "yes" or "no." A. I say that I know they do protect imports.

Q. I see. A. Copies of imports.

1316

Q. That is just as worthy of belief as the rest of your testimony? A. May I prove it to you? (Witness rises.)

Q. (Interposing) No, no— A. (Interposing) By direct evidence?

Q. Will you please be seated? A. Yes.

Mr. Weisman: I am going to ask that this witness be reprimanded by the Court. I am trying to be gentlemanly with him. I think I am conducting myself within my rights of proper cross-examination, but this witness evidently believes he has a field day here, and I object to it, and I ask that the Court reprimand him.

Mr. Martin: Your Honor please, it is a direct challenge. 1317

Mr. Weisman: No direct challenge.

Examiner Bennett: The witness does not have to agree to a statement by you—

Mr. Weisman: Then the answer—

Examiner Bennett: —by the cross-examiner, as a statement of fact, when he thinks it is not a statement of fact—

1318

Ben B. Hirsch—For Commission—Cross.

Mr. Weisman: No.

Examiner Bennett: That is all the witness did.

Mr. Weisman: No, he did not. He jumped out of his seat and made a speech, and I submit—

Examiner Bennett: No harm has been done; he has not gone any further.

Mr. Weisman: I think it is indicative of his general conduct.

Examiner Bennett: I don't think his conduct is reprehensible at all.

Mr. Weisman: However—well—

1319

Examiner Bennett: I would think that would be a wholly unwarranted reflection upon this witness. I think he is quite as fair and quite as intelligent as other witnesses.

Mr. Weisman: I think perhaps more intelligent.

Examiner Bennett: Yes.

The Witness: Thank you.

Examiner Bennett: Well, I think that there are two gentlemen of intelligence contending; it is rather interesting.

Mr. Weisman: There hasn't been any contention among the others yet.

The Witness: Mr. Weisman, my only mistake in that—

Mr. Weisman: I ask that this witness be directed to keep still until he is asked a question.

1320

Examiner Bennett: Yes, wait for the question.

The Witness: All right.

Examiner Bennett: Do not volunteer any information.

The Witness: All right, sir.

Examiner Bennett: We will get along better.

Mr. Martin: Your Honor please, I move at this time to strike the last remark and the question asked by Mr. Weisman from the record, as it is a reflection—

Mr. Weisman (interposing): I ask that it stand. Whoever reads the record may judge—

Examiner Bennett: I will grant the motion to strike.

Mr. Weisman: Exception.

May I have the last question?

(Last question read as follows: "Q. Why do you have to make new dresses for a new design; why cannot you sell the same dresses you sold last season.")

Mr. Weisman: I am going to ask, if it please Your Honor, that all after the "because" be stricken out. The question was, "Do you know?" Then he proceeded to give us a long stump speech that was not responsive to the question.

1322

Examiner Bennett: Read the question and the answer.

(Question and answer read as follows:

"Q. Why do you have to make new dresses for a new design? Why cannot you sell the same dresses you sold last season? "A. Because the customers won't take last season's dresses."

"Q. Do you know why the customers won't— "A. Yes, right, I do know, definitely why, because of the new showings in Paris developing a new trend and we are every one of us manufacturers in America irrespective of whether we make 99.50 stuff or 2.87½ stuff"—)

1323

Examiner Bennett: The answer may be stricken beginning with "because."

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. Now, before this line you had another line, a spring line? A. Yes, sir.

1324

Ben B. Hirsch—For Commission—Cross.

Q. And that spring line, what was your best recollection of the number of dresses that you had on that spring line?

A. Commencing from what period to when, if I may ask?

Q. All right, I will try to get it from you. A. Thank you.

Q. This was your fall line, was it not? A. That is right.

Q. Now, what do you denominate the line that you had before this line? A. Summer line.

Q. How many dresses would you say were in that summer line? A. You mean how many we actually put in work, or how many samples we showed during the entire—

1325

Q. How many samples did you show? A. Perhaps thirty, forty.

Q. How many did you have actually put in work? In other words, how many of these thirty or forty were purchased? A. About 50 per cent.

Q. 50 per cent.? A. Yes.

Q. Those of the 50 per cent. were the hot numbers, that found consumer acceptance? A. That is right.

Q. And from the sale of that 50 per cent. you hope to make up the fourth of your experimentation and production with regard to the 50 per cent. that were discarded? A. Yes, sir.

Q. Now, were all of those new dresses, what you denominated new assemblies? A. No, to the same extent as all are.

1326

Q. Yes. Now, what line did you have before that? A. Spring line.

Q. Spring line? A. Yes.

Q. How many dresses, different kinds, were on the spring line? A. From November, 1935, until May, I would say we had about a hundred.

Q. A hundred.

Mr. Martin: Excuse me, please.

Your Honor please, I would like to renew my suggestion that this is not proper cross-examination.

There was nothing along these lines asked of this witness on direct testimony.

Mr. Weisman: I have told the Court I am going to connect this up in a few moments if you let me get along.

Mr. Martin: I would like to know how long we have to go on with this line.

Mr. Weisman: I believe less time than it takes you to intersperse these objections. This is a province of cross-examination, and I submit—

Mr. Martin: I submit there is a province for cross-examination, but you are not within that province.

Examiner Bennett: Will you point out what part of the direct—

1328

Mr. Weisman (interposing): I will.

Examiner Bennett: Will you point out in the record what part of the cross-examination you are directing this to?

Mr. Weisman: I would like to point it out to the Court.

Examiner Bennett: How?

Mr. Weisman: I would like to point it out to you. I don't like to make it—

Examiner Bennett: Yes.

Mr. Weisman: Come up here, Mr. Martin.

(There was a discussion off the record.)

Examiner Bennett: Will you show me in the record of yesterday's testimony what you are cross-examining on? We follow the American rule, and we do not allow cross-examination on anything except the direct examination, the substance of the direct examination. If you can show me what you are cross-examining him on that goes into this style business—

1329

(There was a discussion off the record.)

1330

Ben B. Hirsch—For Commission—Cross.

Examiner Bennett: I am talking about the direct examination. I want you to point out the part in the direct examination of this witness upon which you are now cross-examining, which makes a foundation for all that you are attempting to bring out?

Mr. Weisman: May I have the Commission's Exhibits 287 to 303?

(Reporter hands exhibits to counsel.)

By Mr. Weisman.

1331 Q. With regard to Commission's Exhibit No. 286, you received an order for the dresses shown thereon, did you not, from the Palace? A. Yes, sir.

Q. Before you shipped the dresses? A. Yes, sir.

Q. Have you that order in court? A. It probably is among the orders that I have.

Q. Well, why didn't you get out the order as well as the return?

Mr. Martin: I object to that, your Honor.

By Mr. Weisman.

Q. I want to know. A. Why didn't I get it out? I will be very glad to.

Q. You were not asked to. A. I was not asked to. I will be very glad to, if I can.

1332 Q. Will you please get out the order on this one (referring to Commission's Exhibit 286), and you might, while you are about it, get out the orders on all of these (indicating exhibits).

Mr. Martin: I object to all of that, your Honor. It is unnecessary.

Mr. Weisman: That is a new ground of objection.

Examiner Bennett: Do you want to do that?

The Witness: Your Honor, it will take me two hours to go through all those orders there to find that order, unless you give me a recess to go back to my place, or call up to see if we can still find the cards that we kept of last year.

Examiner Bennett: Yes.

The Witness: I mean, we have index cards referring to the number of the order thereon.

Examiner Bennett: I sustain the objection.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes, you may have an exception.

Those things are placed at your disposal; if you want to find those orders, why, go ahead. 1334

By Mr. Weisman.

Q. When the order was placed with you for the dresses shown on Commission's Exhibit 286, was there a stamp placed on that order?

Mr. Martin: I object to any reference to the order, if Your Honor please.

Mr. Weisman: Here is testimony introduced that he got back certain dresses. Now, I want to show from this witness that he properly got them back under the terms of the order. Now, it is a queer procedure when the attorney for the Commission will object to eliciting the facts with regard thereto. 1335
I submit if my friend does not

Examiner Bennett: Well, I will let him answer, if he remembers.

A. It probably did have the stamp on it.

1336

*Ben B. Hirsch—For Commission—Cross.**By Mr. Weisman.*

Q. Give me the wording of that stamp? Have you got an exhibit there?

Mr. Seidman: You have one, of his exhibits.

Examiner Bennett: There is one of the exhibits in there with the stamp on it.

The Witness: May I find it?

Mr. Golby: Here is one, Exhibit 640 in the record.

Mr. Weisman: Exhibit 640?

Mr. Martin: Here it is.

1337

By Mr. Weisman.

Q. So that when you took that order for those dresses there was placed on the order by the buyer the words: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators' Guild of America, Inc. The purchaser reserves the right to retain any merchandise which is not as warranted"——

Mr. Martin: To return.

Mr. Weisman: What did I say?

The Witness: Retain.

Mr. Martin: Retain.

Mr. Weisman: Oh, return.

1338

By Mr. Weisman.

Q. —"to return any merchandise that is not as warranted." A. That is right.

Q. So that you took the order for this merchandise, and when you took it you warranted to the seller that it was not a copy of any styles originated by members of the Fashion Originators' Guild of America? A. We did not warrant anything; the order was placed that way because, as I testified——

Q. (Interposing) And that is the way you accepted the order? A. Correct.

Q. I see. And at the time you accepted the order, you knew that the purchaser reserved the right to return any merchandise which was not as warranted. A. So the order was stamped.

Q. And so accepted by you? A. Yes.

Q. And you made that warranty. Didn't you understand that? A. We did not.

Q. Do you understand English? A. I do.

Q. You did not understand by the terms of this order, and your acceptance of it, that you were making the warranty therein expressed? A. We did not send the order.

Q. I know, but you received it stamped? A. Correct.

1340

Q. And did you not expect to abide by the terms of the order as stamped? A. As a matter of fact—

Q. No. Did you expect to abide by the terms of the order as stamped? A. No.

Q. In other words, you took the order, you made the warranty, but you did not expect to keep it? A. We made no warranty.

Q. In other words, you say that your acceptance of this order, in your mind, gave you the right to make a material reservation that, irrespective of what the seller to purchaser put thereon, you made no warranty? A. In agreement—

Q. No. "Yes" or "no," please. I thought you and I agreed that we were not going to quarrel? A. Repeat it, then.

1341

Q. (Last question read.) A. As far as the stamp is concerned, yes.

By Mr. Weisman.

Q. In other words, you took your chances on it? A. On the stamp.

1342

Ben B. Hirsch—For Commission—Cross.

Q. Yes. You did not tell that to the purchaser at the time that he gave you the order, did you? A. They told it to us.

Q. What did they tell you? A. To disregard it.

Q. To disregard it? A. That is right.

Q. If they told you to disregard it, why didn't you tell them to take it off? A. They could not. As I testified yesterday, the buyer had no prerogative in the matter at all. They were instructed by the heads, by the buying officers, that the orders must be left with the stamps on it.

Q. I see. A. And not to vary from that.

1343

Q. Now, when they returned this merchandise to you, did you write any letter objecting to its return? A. Pointing—

Q. (Interposing) No, no, I am referring to Commission's Exhibit 286. A. I am not sure about this particular case.

Q. Well, this particular case was picked out by you and made the basis of a complaint to the Federal Trade Commission, was it not? A. That is right; correct.

Q. And did you not look up all your evidence other than the order to show all of the facts to the Federal Trade Commission? A. No.

Q. Well, did you suppress any evidence with regard to this transaction? A. No.

Mr. Ballon: Just a moment. I object.

Mr. Weisman: He has answered.

1344

Mr. Ballon: I ask that that answer be stricken out.

Examiner Bennett: I think the answer better stand to the question asked.

Mr. Ballon: What was your answer?

Examiner Bennett: I say, the answer better stand; he said "no."

By Mr. Weisman.

Q. Did you give them all of the evidence you had in connection with this transaction? A. Perhaps, yes; perhaps, no.

Q. What do you think now? "Perhaps, yes; perhaps no," is no answer. A. In connection with this particular transaction, you are referring?

Q. Yes. A. We may have written them on this thing; we may not.

Q. I don't ask you that.

Mr. Martin: Let him answer the question.

Mr. Weisman: Well, he did not answer that. That was my objection.

1346

Mr. Martin: You do not give him an opportunity.

Mr. Weisman: Oh, yes, I will give him plenty of chance.

Examiner Bennett: Now, gentlemen, one at a time.

Mr. Weisman: Now may the Court have the question read and see whether it is answered or not? The question I asked him was, Did he give all the evidence to the Commission?

Examiner Bennett: Well, you are examining a lay witness, not an attorney. He is not an expert in evidence. He gave the answer that a layman would give.

1347

Mr. Weisman: I submit that the Court should direct him to answer my questions according to the rules of evidence and procedure.

Examiner Bennett: He may answer if he is qualified to do so, but you asked him a technical question.

Mr. Weisman: Nothing technical about asking whether or not a man gave to the Commission all the evidence he had concerning a transaction.

1348

Ben B. Hirsch—For Commission—Cross.

Examiner Bennett: It is technical so far as you refer to evidence in the lawsuit.

By Mr. Weisman.

Q. Well, this transaction with reference to Commission's Exhibit No. 286, did you give them all of the papers, memoranda, data, writings of every kind, nature or description which referred to this transaction? A. No.

Q. Now, what did you keep out? A. The order, certainly.

Q. Yes. A. And I don't know of anything else.

Q. Well, when you got this notice of return because of failure of the merchandise to comply with the terms of the warranty, did you write a letter to the Palace, at Kansas City, Missouri, therein referred to, saying that you were told when the order was placed that, notwithstanding the stamp, that you could disregard it? A. I don't remember.

Q. Well, will you look among your files and find out?
A. Yes, sir (witness makes note).

Mr. Martin: I object, Mr. Examiner.

Mr. Weisman: Now—

Examiner Bennett: You can do that, of course, if you wish. That is voluntary with you.

By Mr. Weisman.

Q. Now, referring to— A. Just a moment, just one moment, if you don't mind.

(Witness makes note.)

The Witness: Yes, sir.

By Mr. Weisman.

Q. Now, referring to Commission's Exhibit No. 287, when the order for that merchandise was placed with you, did it have the words upon it, "This order is placed upon

the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted"? A. It probably did.

Q. And you accepted it with that upon that warranty, did you? A. We accepted it with that stamp on it.

Q. Now, I notice that Commission's Exhibit No. 287 has been to some degree—I will withdraw that. A. I am sorry. Excuse me.

Q. At the time this was sent to you by Jordan Marsh Company did it have this price marked over, as it now appears, or did you do that? A. We marked it over.

Q. In other words, this exhibit is not in the condition that it was when you received it from Jordan Marsh? A. With the exception of the price being crossed out, it is exactly the same.

Q. Why did you cross out the price? A. Because they have a special price from us.

Q. What do you mean, they have a special price from you? Are you not a 6.75 house? A. We sell some stuff at 6.62.50.

Q. Who do you sell at 6.62?

Mr. Martin: I object to that.

By Mr. Weisman:

Q. Are you a 6.62 house?

Mr. Martin: I object to that. It is irrelevant and immaterial.

Mr. Weisman: On a secret discount?

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

1360

Ben B. Hirsch—For Commission—Cross.

chandise, that under the terms of the order the purchaser was entitled to return it? A. I did not—

Q. You did not know that? A. That's right.

Q. You did not know that notwithstanding the fact that the order says that the purchaser reserves the right to return any merchandise which is not as warranted? A. That is correct.

Q. Well, when you got these notifications of return, if you did not know prior thereto that it would be returned, did you write a letter of protest asking them why it was being returned? A. Well, they stated in their return memorandum.

1361

Q. But you said that you did not know that under such circumstances they would have a right to return it? A. Well—

Q. Didn't you just state that? A. That was a system that we were objecting to.

Mr. Martin: I object to—

Mr. Weisman: I am asking this witness what he stated a moment ago. I submit that is certainly the province of cross-examination.

Examiner Bennett: All right.

A. (Continuing) That is a system that we were generally objecting to.

1362

Mr. Weisman: Now I ask that the answer be stricken out.

Mr. Haycraft: I submit that is not a proper question, calling for a legal conclusion which this lay witness could not have, as to whether or not these retail dealers had the right.

Mr. Weisman: I did not ask him whether or not they had the right. I asked him whether they knew.

Mr. Haycraft: Read the question.

(Question and answer read.)

Examiner Bennett: Well, I am going to let it stand. Go ahead.

By Mr. Weisman.

Q. When you received notification of this return, you did not know prior thereto that the seller had reserved the right to return the merchandise if it was not as warranted, did you? A. In these particular cases?

Q. Yes. A. In these particular cases, so the order was stamped.

Q. Did you know that by that stamp the purchaser was reserving the right to return the merchandise if it was not as warranted?

1364

Mr. Martin: I object. It calls for a legal conclusion on the part of this witness.

Mr. Weisman: What this witness knew is not a legal conclusion.

Examiner Bennett: I sustain the objection. You are using it, a technical legal word.

Mr. Weisman: I beg your pardon?

Examiner Bennett: I say as you are using it, it is a technical legal word which the witness does not seem to take—to know the meaning of, from his testimony, as to warranty.

Mr. Weisman: All right, I will reduce it to words of one syllable, if I can.

By Mr. Weisman.

1365

Q. This letter was placed with you; is that correct? A. Yes, sir.

Q. Upon the order were the words that the same was placed—that the order was placed with you upon your warranty that the garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc.; is that not so? A. Right.

1366

Ben B. Hirsch—For Commission—Cross.

Q. Did you or did you not know that that meant that you were promising that any merchandise ordered was not copies of styles originated by members of the Fashion Originators Guild? A. I was not promising.

Mr. Weisman: Now I ask that the answer be stricken out. He says, "I was not promising." Well, I will let it stand. I will withdraw it.

By Mr. Weisman.

Q. In other words, you felt that notwithstanding the words on this order, if the merchandise was copies of Fashion Originators Guild styles you had a right to send it on just the same?

1367

Mr. Martin: I object.

A. Correct.

By Mr. Weisman.

Q. And that the purchaser did not have the right to return it? A. The purchaser, correct.

Q. And notwithstanding that belief, when the purchaser did return the merchandise, as evidenced by Commission's Exhibit 291, you did not object, but accepted the merchandise for return? A. I don't believe we objected in this instance, but accepted it. May I see that?

1368

Mr. Weisman: Just a moment. You can see anything you want when I am finished.

The Witness: I am sorry. May I correct, Mr. Counsel, my answer on this Marshall Field?

By Mr. Weisman.

Q. Yes, certainly, if you want to correct it. A. I believe that we did object with Marshall Field in connection with

their return, that we did write them a letter and got a response to it, and I believe that that letter is in evidence.

Q. Are you referring to Commission's Exhibit No. 292 (indicating)? A. Then I am confused on that. Commission's Exhibit 292 refers to another return.

Q. So that when you got the return, Commission's Exhibit 291, you did not object to the return? A. I don't believe we did.

Q. Now I show you Commission's Exhibit No. 292. You said that that referred to the return other than the one on Commission's Exhibit 291? A. Yes, sir.

Q. And that was the sole objection that you made to the return referred to in that letter; in other words, the letter contains your sole objection? A. No, sir; we asked for information in this letter.

1370

Q. Well, did you anywhere in this letter say, in words or substance, you have no right to return the merchandise if it is copies, or did you only ask for the proof that it was copies? A. At first we asked for proof.

Q. Well, in this letter do you at any place say, in words or substance, that if our merchandise is copies you may not return it? A. No.

Mr. Martin: I object to this, your Honor. The letter is in evidence, it speaks for itself.

Mr. Weisman: I want his interpretation of it.

Mr. Martin: You don't have to have his interpretation.

1371

Mr. Weisman: The Judge has ruled on this, that we can get the interpretation.

Mr. Martin: The letter is in evidence.

Examiner Bennett: You can find the meaning of terms.

Mr. Weisman: That is what I mean.

Examiner Bennett: If there is a peculiar meaning to them.

1372

*Ben B. Hirsch—For Commission—Cross.**Mr. Weisman: Yes.**Examiner Bennett: I doubt as to the interpretation.**A. (Continuing) We did not care to go into arguments with Marshall Field & Company before we got the information we asked for in that letter.**By Mr. Weisman.*

1373

*Q. So that you did not at any time, notwithstanding the returns from Marshall Field, write to Marshall Field and say, in words or substance, that if our merchandise is copies of Guild members' merchandise you may not return it? You never did that, did you? A. No, I did not write that.**Q. Well, notwithstanding the fact that you believed that to be a fact? A. I did not believe it to be a fact; they had a right to return it.**Q. I say that, notwithstanding the fact that you did not believe that they had a right to return it, you never wrote them to that effect? A. From an economic standpoint—**Q. (Interposing) Not from an economic standpoint, from an actual standpoint, did you ever write them to that effect? A. I probably did not go further into these matters because we were helpless.*

1374

*Mr. Weisman: I ask that the latter part of the answer be stricken out.**Examiner Bennett: Denied.**Mr. Weisman: Exception.**By Mr. Weisman.**Q. Well, you were not helpless to write a letter, were you? A. Letters bring about antagonisms. We cannot afford to antagonize our customers; we would be driven out of business.*

Q. You would rather make a false warranty to them in the hope that they would make a mistake and not find out the truth?

Mr. Martin: I object to that.

A. We never made a warranty—

Mr. Weisman: I want to find out.

Examiner Bennett: Sustained.

Mr. Martin: He used the words "false warranty."

Examiner Bennett: Sustained. I am not going to let you fill the record with questions containing accusations of that kind.

Mr. Weisman: I think the record speaks for itself on that score. 1376

Examiner Bennett: Then there is no need of that reflection upon the witness, or intended reflection.

By Mr. Weisman.

Q. Well, you were not helpless to write them for information concerning the query as to where or how it had been adjudged a copy, were you? A. No, that was conciliatory.

Mr. Weisman: I ask that the latter part of the answer be stricken out.

Examiner Bennett: Read the answer.

(Answer read.)

Examiner Bennett: Overruled. Motion denied. 1377

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Then I take it that if Marshall Field had returned this merchandise to you and there had been no stamp at all upon the order, you still would have accepted the return rather than antagonize Marshall Field?

1378

Ben B. Hirsch—For Commission—Cross.

Mr. Martin: I object to that question, your Honor.

Mr. Weisman: It is perfectly proper in view of the witness' testimony.

Examiner Bennett: I will let him answer. Overruled.

A. Marshall Field don't do business that way.

Mr. Weisman: I ask that the answer be stricken out.

Examiner Bennett: Well, I think I will let it stand.

1379

Mr. Weisman: I ask that he be directed to answer my question.

Examiner Bennett: If your question presents an impossible situation, that is a situation to be dealt with—

Mr. Weisman (interposing): Your Honor—

Examiner Bennett: —of course, the witness is entitled to call your attention to it, and that is what he is doing.

Mr. Weisman: Of course, it is not impossible—

Examiner Bennett: His testimony is that it is with Marshall Field. Well, now, if you know better, I submit that you should—

1380

By Mr. Weisman.

Q. Well, you looked upon this stamp as being without meaning, did you not? A. As given—

Q. Yes or no, did you look upon it as being without meaning? A. Meaning only to a certain extent.

Q. Well, to what extent did you think it had meaning?

A. It was given to us under duress, as far as we were concerned.

Mr. Weisman: I ask that the answer be stricken out.

Mr. Martin: It is perfectly proper.

Examiner Bennett: It may stand.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. What do you mean, what meaning did it have to you, what meaning did it have to you? A. That it was a part of a scheme on the part of the Fashion Originators Guild to set up a combination in restraint of trade.

Q. What do you know about combinations in restraint of trade? A. I consulted with an attorney.

Q. What attorney? A. Hartman, Sheridan & Tekulsky.

Q. And they told you the meaning of this phrase? A. They told me their interpretation of it, yes.

Q. And that was the interpretation that you have just given us? A. That it was under duress, that it was illegal, that it was a combination in restraint of trade and that I should not worry about it, but disregard it, as far as the orders that I was receiving with those stamps on them.

Q. So that you treated this stamp as a nullity? A. As a menace.

Q. Did you not treat it as having no force? A. Force like a bludgeon would have.

Mr. Weisman: I ask that the answer be stricken out as given.

Examiner Bennett: I will strike it out until the witness answers it directly. Read the question.

(Question read.)

By Mr. Weisman.

Q. Did you not treat it as having no force? A. It had certain force.

1384

Ben B. Hirsch--For Commission--Cross.

Q. Have you not testified that you looked upon this warranty as giving to the purchaser no right to return the merchandise if it were found to be a copy? A. Correct.

Q. Then, since the entire warranty or promise directed itself to that, did you not treat this as having entirely no force whatsoever? A. I would like to have that question read again.

Q. (Question read) A. No, I cannot say that I did.

Q. Now I show you Commission's Exhibit No. 295. A. Yes.

1385 Q. The dresses shown on that order, on that return notice, were also ordered by the purchaser by an order which had the warranty of the stamp on it as I have read; is that correct? A. I believe the order referring to this particular return had no warranty stamp on it.

Q. Well, then, why did you accept the return of the merchandise? A. May I refer to the correspondence in evidence on this?

Q. Do you know why you accepted the return of the merchandise? A. On the general principle that we cannot antagonize our customers.

Q. I see. So that if the customer sought to return the merchandise to you, using the Guild stamp as a reason, whether or not he had a right to return it by reason of the order bearing the stamp, why, you would, notwithstanding, accept the return; is that correct? A. It was a part of the whole thing.

1386

Q. Would you or would not you accept that return, Mr. Hirsch? A. That is hypothetical.

Q. Did you not in that case? A. I did.

Q. You did? A. I did.

Q. If other customers had done likewise, to wit, returned the merchandise to you, notwithstanding the fact that the order contained no warranty to the effect that the garments returned—or, rather, that the garments ordered were not copies, would you likewise have accepted the

return of such merchandise and accepted the return so as not to antagonize them? A. If I understand your question, it would depend upon the customer.

Q. Suppose it were Marshall Field? A. That is, hypothetical. I do not know what I would do in that particular instance.

Q. Suppose it were the Palace Clothing Company? A. I do not know what I would do in that particular instance.

Q. Suppose it were Kline's of St. Louis, Missouri? A. I do not know what I would do in that particular instance.

Q. Suppose it was Carson, Pirie, Scott & Company of Chicago, Illinois? A. I do not know what I would do in that particular instance.

Q. Suppose it were Rubenstein of St. Louis?

1388

Examiner Bennett: Let there be an end to this somewhere.

Mr. Weisman: The reason that I am going over all of these is that these are again references to people in evidence here. That is part of the necessity as indicated by your Honor, the necessity to connect these up, and I am also showing how necessary it is to connect them up.

Examiner Bennett: If you are checking these particular people who are shown on the exhibits, you may do so.

Mr. Weisman: That is all I am taking, if your Honor please. I am simply taking these that are shown on these exhibits. I think that is necessary because I want to show what has been done there.

1389

By Mr. Weisman.

Q. Suppose it was Rubenstein of St. Louis, this one here? A. I do not know what I would do in that particular instance. That is hypothetical.

1390

Ben B. Hirsch—For Commission—Cross.

Q. Suppose of Frank & Seder? A. I do not know what I would do in that particular instance.

Q. What did you mean when you said to me a few moments ago that you would in certain cases and not in certain cases? A. Exactly the same thing that I meant then.

Q. In what certain cases would you accept the return of the merchandise even though the order did not have this warranty stamp on it? A. It would depend upon how valuable an account that particular account was.

1391

Q. Are any of these accounts that I have mentioned so valuable that you would have accepted the return of the merchandise from them on the ground that it was copies even though the order did not specify the right to return it if it were a copy? A. That is a hard question to answer, Mr. Weisman.

Q. What is hard about it? A. Because the customer may be a very good customer one season and he may not be a very good customer in another season; you may not be getting enough from them in another season to warrant it. That is what I meant by saying that the economic question was involved there.

Mr. Weisman: I ask that what he said about that be stricken out. I did not ask him what he said before about the economic situation. I am asking what he means now.

1392

Examiner Bennett: The reference to the economic situation may be stricken.

By Mr. Weisman.

Q. That is the best answer you can make to this query?
A. Yes.

Q. You accepted the return of the merchandise referred to on Commission's Exhibit 295? A. I believe I did.

Q. Did you not think that you did? Did you not testify yesterday in answer to Mr. Martin's question that you did? A. I did.

Q. What information did you have yesterday that you do not have now that permitted you to answer it yesterday that you did and to-day you have to simply say, "I believe I did"? What makes you so indefinite to-day in answer to my question when you were so definite yesterday in answer to Mr. Martin's question? A. I do not understand.

Q. What information did you have yesterday that you do not have now? A. None.

Q. Well, you were able to say to him that you received the return and to me you can only say that you believed that you received the return.

1394

Mr. Martin: Just a second. If your Honor please, I asked Mr. Hirsch something else, but I do not recall asking Mr. Hirsch whether these goods were returned or not.

Mr. Weisman: I think you did.

Mr. Martin: I would like you to show it to me. I do not remember it and I wish you would permit me to finish before you interrupt, please.

Mr. Weisman: Excuse me.

Mr. Martin: If I recall it correctly—and if I am wrong I am perfectly willing to be corrected—but if I recall it correctly I asked him to identify these exhibits. If I asked him anything further than that, I do not recall it.

1395

Mr. Weisman: You may not have asked the question. I think it was the Court that asked the question.

Mr. Martin: I do not remember that.

Examiner Bennett: I asked that question, I think.

Mr. Weisman: See?

1396

Ben B. Hirsch—For Commission—Cross.

Mr. Martin: That would be true. I would have to look at the record to see just what was said.

Mr. Haycraft: I think that is true.

Mr. Martin: I think, if I recall it correctly, your Honor, the Court's question was whether these goods were returned. I do not think there was any testimony that the witness testified that he accepted the return of these goods, or that he was even asked that particular question before.

Examiner Bennett: He testified to the physical conditions surrounding the handling of the goods, the shipping of the goods, and that they were returned. I do not believe it went further than that. The record will show.

1397

By Mr. Weisman.

Q. With reference to Commission's Exhibit No. 283, to and including Commission's Exhibit No. 294, inclusive, concerning which I have heretofore asked you questions, did you refuse to accept the return of any of this merchandise? A. Does that mean all of the stuff that was accepted?

Q. I mean this here (indicating). A. To the best of my recollection at this time I believe we accepted all of these returns.

1398

Q. To the best of your recollection did you write to any of these people that we have referred to with regard to Commission's Exhibit 283 to and including Commission's Exhibit 295, objecting that you were not obliged or obligated to accept the return of the merchandise which was a copy of merchandise produced by members of the Fashion Originators Guild of America, Inc.? A. Well, you have some copies of the letters there to that end—some of them, I think.

Q. See whether that answers my question.

Mr. Weisman: Let the question be read.
(Question read.)

A. I may have. I cannot remember at this moment. I would have to refer to the files.

By Mr. Weisman.

Q. Do you remember at this time a single instance where you sent such a suggestion? A. You have it right there.

Mr. Weisman: I ask that the answer be stricken out and ask that the witness be directed to answer the question:

Examiner Bennett: I take it that he refers to an instance which you have in your hand. 1400

Mr. Weisman: That is why I want him to answer the question, because this is not an instance that I have in my hand.

Examiner Bennett: Perhaps not. I do not know.

By Mr. Weisman.

Q. Do you know of a single such instance? A. Yes.

Q. Tell me of an instance that you refer to, anywhere in Commission's Exhibit No. 293 to Commission's Exhibit No. 295, inclusive. (Counsel hands those exhibits to the witness.) A. I believe we wrote to Snellenburg.

Q. What leads you to believe that you wrote to Snellenburg, objecting that you were not obligated to accept the return of the merchandise which was a copy of Fashion Originators Guild? A. That is my recollection (indicating Commission's Exhibit 295). 1401

Q. Did you not testify a moment ago, with regard to Commission's Exhibit No. 295, you accepted it without objection even though the order did not have the stamp on it? Have a look at Commission's Exhibit No. 295. Look at Commission's Exhibit No. 295. You were looking at something else. A. Which is 295?

1402

Ben B. Hirsch—For Commission—Cross.

Q. That is Snellenburg's? A. Snellenburg's?

Q. Yes. A. I am prompted to state, in view of this letter—

Q. No, the letter Commission's Exhibit 295. Did you not testify not ten minutes ago with regard to Commission's Exhibit 295 you did not object to the return of it and you did not object because you did not want to antagonize your customers, notwithstanding the fact that the order did not contain the warranty clause on it? A. May I—

Q. Did you or did you not, yes or no? A. I did testify to that if the record shows it.

1403

Q. Was it not correct or was it correct? A. My recollection is that I wrote Snellenburg about the returns.

Q. That is not an answer to the question. A. I don't know whether I wrote him with reference to that specific item.

Q. If you do not know whether you did or not, why did you say a moment ago that you did? A. Because you have several returns of Snellenburg's and one was a return I wrote him about and the others I probably did not. I could not tell exactly without looking at them.

Q. Will you try to give us answers to the best of your recollection? A. I will.

1404

Q. Will you now do so? What are you trying to do? Are you trying to give us answers to the best of your recollection or are you just guessing? A. That is to the best of my recollection.

Q. Let us get this matter cleared up for once and for all. We will go back to Commission's Exhibit No. 295.

Mr. Weisman: I am sorry to take up all of this time, your Honor, but this witness is constantly changing his testimony and I cannot tell whether I am coming or going.

By Mr. Weisman.

Q. Did you not testify with regard to Commission's Exhibit No. 295, which is a return from Snellenburg, that the order in connection with the exhibit did not have a warranty on it? Did you testify to that effect or did you not? A. I believe I did.

Q. Was that correct? A. I believe it was.

Q. Well, we will put that aside.

Mr. Martin: If your Honor please, I think that this witness' testimony was that the order might not have had that stamp on it.

Mr. Weisman: This is one on which he did not. This was the exception. Do you want to testify?

1406

Mr. Martin: I will be perfectly willing to.

Mr. Weisman: Then will you step up here and be sworn as a witness?

Mr. Martin: Now, do not be like that. I would like to call the Court's attention to the fact that I think the testimony was that it might have contained the stamp or that it might not have.

Examiner Bennett: I do not know that there is anything to rule on there. The testimony will show. I doubt that we can see at this time without going to the record.

Mr. Weisman: I will not press that any further, your Honor.

1407

By Mr. Weisman.

Q. I show you Commission's Exhibit No. 300— A. Yes.

Q. I ask you whether or not the order for that—if those dresses had upon that order a promise that the goods that were shipped in compliance therewith would not be copies of Guild Originators garment originations? A. It had a warranty stamp on it.

1408

Ben B. Hirsch—For Commission—Cross.

Q: Did it have—. A. I believe it did.

Q. When you sent that merchandise out you knew that pursuant to the terms of the warranty stamp, that the seller or the purchaser claimed the right to return the merchandise if the merchandise was a copy of Guild merchandise? A. There was no such an arrangement with them.

Q. It had the stamp on it? A. That is correct.

Q. The wording of the stamp is, among other things, "The purchaser reserves the right to return any merchandise"—

1409

Mr. Martin: That is objected to, if your Honor please.

Examiner Bennett: Sustained. I am not going to entertain any further questions containing a recital of this stamp.

Mr. Weisman: Your Honor, may I take a respectful exception to your Honor's ruling?

Examiner Bennett: You may have an exception. Of course, that refers only to this witness.

Mr. Weisman: I understand, your Honor.

By Mr. Weisman.

Q. Referring to Commission's Exhibit No. 296, did the order which was placed with you in connection with the matter have on it the so-called promise or warranty or stamp which the Court says I am not to reiterate in detail, but you know what I am referring to? A. Yes, I believe it did.

Q. Did you accept the return of it? A. I believe we did.

Q. Did you write any letter stating that under the order you were not bound to accept the return of the goods? A. I do not remember.

Q. Have you—if you wrote such a letter, you would remember it? A. I would be able to find it.

Q. Can you find it? A. If I wrote such a letter, I will be able to find it.

Q. Will you between the time after this afternoon's examination and to-morrow morning examine your files to see whether or not you have any letters objecting to any of these returns on the ground that you did not understand the stamp to—or that the stamp did not give the purchaser the right to return it? A. Yes, sir. I will do so if you will give me the dates to look up, so that I may know what to refer to when I go to look it up.

Q. I will give them to you when we have finished, in order to save time. A. Very well.

Q. That will apply equally to all of these exhibits, namely, Commission's Exhibit 286 to and including Commission's Exhibit 303? A. Yes.

1412

Q. With regard to the returns, does that refer to Commission's Exhibit 297? Does that refer to the same matter? A. No, that refers to style No. 207, and the style here has reference to style No. 172.

Q. With regard to Commission's Exhibit 297, did that order contain the stamp? A. What?

Q. Did that order contain the stamp? A. I believe it did. I believe it did.

Q. Did you likewise accept the return of that merchandise? A. I think I did.

Q. Did you write any letter objecting to its return? A. I do not remember.

Q. If you did, you would be able to find that letter. That was, comparatively, a recent transaction, was it not? A. What?

1413

Q. That was a comparatively recent transaction. If you did, you would be able to find the letter in regard to it? A. I think that is last year, in November or October, is it?

Q. October, I think. A. Yes, there is no reason why I should not be able to find it.

1414

Ben B. Hirsch—For Commission—Cross.

Q. With regard to Commission's Exhibit 298, which is also a return from Kline's, if I asked you the same questions that I asked you with regard to Commission's Exhibit No. 297, your responses would be the same, would they? A. Yes, sir.

Q. Commission's Exhibit No. 299 refers to a return of your style No. 172? A. Yes.

Q. You did not produce the notice of return, you just got the letter? A. I cannot say. At the time I believe I did. It should be around here somewhere. I think I gave it to Commission's counsel and I suppose they have produced it, or will if they see fit.

1415

Q. Where is it? Is that it (handing witness a document)? A. No. That refers to style No. 207. This is another style. This refers to style No. 172, which dresses I know were returned. We took them in.

Q. You took them in? A. We took them in.

Q. We do not have it here. Have you given it to the Commission's counsel? A. I think so.

Q. If you gave it to Commission's counsel, they did not produce it. A. It is quite possible that we did not get a return slip on that, come to think of it.

Q. But the order, whether it had— A. I beg your pardon, Mr. Weisman. I was looking at this document.

Q. But the order upon which that merchandise was placed, I take it, was likewise—I withdraw "was likewise"—had likewise the stamp or warranty on it? A. I believe it did.

1416

Q. You are very friendly with the buyer for Carson, Pirie, Scott & Company of Chicago? A. Yes.

Q. You are sometimes known as Larry? A. No, my brother.

Q. Who is Larry? A. My brother.

Q. This letter was written to your brother personally? A. Not personally. As a matter of business.

Q. I mean it was addressed to Larry Hirsch? A. Yes, it was addressed to Larry Hirsch, but it is a matter of business.

Q. Yes. A. Well, it is to his attention.

Q. No, it is not to his attention, but it is to him. Just take the letter and look at it. A. That is correct, but the letter came through an envelope addressed to the firm, if I recall correctly.

Q. Did you ever tell your brother to write Carson, Pirie, Scott & Company of Chicago that notwithstanding the fact that you had accepted the order with the stamp on it, that they had no right to return the merchandise? A. I do not believe I ever told him. I do not believe I would have told him. He would write his own letters.

1418

Q. Would you know if he had written that? A. If I told him to, I might have, but I did not tell him to. He wrote his own letters.

Q. Well, did he ever tell you that he had before written them to that effect, or at any time? A. He generally took care of that himself.

Q. Did he ever tell you that? You are not answering my question. A. No, I do not believe he did.

Q. Why did you accept the return from Carson, Pirie, Scott & Company? A. We thought it was a good idea.

Q. You would not have written such a letter to Carson, Pirie, Scott & Company because you would have felt it would have antagonized them? A. It probably would have antagonized them.

1419

Q. So you would not have written such a letter to them because you did not want to antagonize them? A. Correct. We did not want to antagonize them.

Q. Then, the chances are you did not? A. The chances are we did not.

Q. Well, why don't you say one way or the other? A. To the best of my recollection we probably did not write

1420

Ben B. Hirsch—For Commission—Cross.

them, but I can look it up. The files are available, if you want to get exact information with regard to it.

Q. Then you are going to look it up for me? A. Yes.

Q. All right. Now, with regard to Commission's Exhibit No. 301-A and B, which is the return from the Palace, the order upon which that merchandise was shipped likewise had this warranty stamp upon it? A. I believe it did.

Q. Notwithstanding, and you accepted the return of that merchandise? A. I believe we did.

Q. And before you accepted the return of that merchandise you received Commission's Exhibit 301-A, which gave you the reason why they were returning the merchandise?

1421 A. This letter seems to have come simultaneously with the return slip.

Q. Simultaneously? A. There is some confusion about this, because it says, "Answering your air mail letter," and so forth, "we wish to advise that we are returning these dresses to you," and so forth. I cannot recall whether they had taken up with us whether they wanted to return these prior to this, but I would have to look up the further correspondence with it in order to answer that definitely and correctly.

Q. Did you write them a letter that, notwithstanding the order was placed with the stamp upon it, you did not feel bound to honor the stamp? A. I will get you a copy of that letter.

1422 Q. Did you write them? A. We wrote a letter to them, but I do not know what the contents of the letter were.

Mr. Weisman: I would like to get through with this batch of exhibits before the adjournment, so we can go to something new after the adjournment. It is now 12.30, but I would like to run on for about ten minutes.

Examiner Bennett: Proceed.

Mr. Weisman: One moment.

(There was a discussion off the record.)

By Mr. Weisman.

Q. With regard to Commission's Exhibit No. 302, I notice there is an "A" on here, but I do not know whether it is an "A" and "B" exhibit or not. Did the order upon which or by which the merchandise therein referred to was ordered have the stamp upon it? A. I believe it did.

Q. You accepted the return of that? A. Yes, sir, we did.

Q. Did you write to Rubenstein advising her that notwithstanding the terms of this stamp, you were not going to accept the return of it? A. I had quite some argument with the local office representing Rubenstein on that return. 1424

Q. Did you write them? A. We took it up with the buyer, with the local resident buyer that represents that firm in connection with that return. We refused to accept that return, but they told us we would just have to take them in.

Q. The order upon which that was placed had the stamp upon it? A. I believe it did.

Q. I show you Commission's Exhibit 303, being—

Mr. Weisman: I find here Commission's Exhibits Nos. 303-B and 303-C, but I do not find 303-A.

Mr. Haycraft: That is the order itself.

By Mr. Weisman.

Q. With regard to this transaction from Frank & Seder, reference to which is made in Commission's Exhibits Nos. 303-A, B and C, did the order which called for these goods have the stamp placed upon it? A. May I see the correspondence to refresh my memory?

Q. Yes. A. (Witness examines the document.) May I see the other two?

Q. Yes. A. I am not sure whether the stamp was on this order. I believe it was, but I am not certain of it. I am not sure about this order.

Q. You are certain you accepted the return of the merchandise? A. Ultimately we took it back.

Q. So that you would accept the return of merchandise upon the request of Frank & Seder whether or not the order had the warranty clause on it? A. No.

Q. Is that correct? A. No.

Q. You have just testified that you did not know whether the warranty—whether the order had the warranty stamp on it or not, and— A. (Interposing) Answering—

Q. Just a moment; let me finish my question. A. O.K.

Q. But you were certain you accepted the return. Therefore I ask you if it is not a fact that you would have accepted the return irrespective of whether or not the order contained the warranty clause? A. At this time I do not recall whether that order had the warranty clause on it or not.

Q. But you do recollect that you accepted the return of the merchandise? A. I say I am not even certain about that particular instance, whether we took it back or not.

Mr. Martin: I think we should refer to what is in evidence to see what he did say about that.

By Mr. Weisman.

Q. I will find it out from the witness. Did you state to me a moment ago that "ultimately we took it back"? I believe those were your exact words—that you were certain you accepted the merchandise therein referred to, in any event. A. Well, I think I would like to have the answer read in regard to that.

Q. I am just asking you whether or not you said that?

A. I said I was not sure.

Mr. Weisman: Let us see whether you did or not. May we have the question and answer read, your Honor?

Examiner Bennett: Yes.

(Question and answer read.)

By Mr. Weisman.

Q. Why are you certain? You just said you "ultimately took it back." A. I believe we ultimately took it back.

Q. You did not say you "believed" before. A. I said before I had in my mind that possibly we took it back. I think I said that I believed we ultimately took it back.

Q. You think the Reporter made a mistake? A. No. I do not think he made a mistake.

Q. The Reporter's record is you said you believed you took it back. A. Well, I tell you now I believe we took it back, but I am not certain of it.

Q. Now, tell me about the order, did you also and do you also now believe that the order had the warranty stamp on it? A. I do not recall that one way or the other at this time.

Q. Would you have taken the merchandise back if the order did not have the warranty on it? A. I do not know whether I would have done so at the time.

Q. That is the best answer that you can make? A. Yes, sir.

Q. Earlier, with regard to these exhibits you made the statement that the buyer for Jordan-Marsh told you that notwithstanding the fact that the stamp was thereon, you could disregard it? A. I did not say that.

Examiner Bennett: It is now 12.40. We will take a recess until 2 o'clock for lunch.

(Whereupon, at 12.40 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

1432

Ben B. Hirsch—For Commission—Cross.

AFTERNOON SESSION

Examiner Bennett: The witness has not come. I presume he understood he was not through.

Mr. Seidman: I think Mr. Weisman asked him to get certain papers.

The Witness: I am sorry if I kept anyone waiting, your Honor.

Examiner Bennett: All right. Be in order, please. You may proceed.

By Mr. Weisman.

1433

Q. Mr. Hirsch, in your testimony this morning, you stated that certain of the buyers told you that you could disregard the stamp, that they wanted the stamp on the orders for merchandise; is that correct? A. That is correct.

Q. Did all of the buyers tell you that? A. No.

Q. Or only some of them? A. Just a couple.

Q. Who were the buyers that told you that? A. I would not like to mention the names, it might be betraying confidence, it might be betraying a person in a subordinate position who might be jeopardized with the firm that they were working for.

Q. They had authority to give you these orders, did they not? A. Yes, sir.

1434

Q. Now, I want to know who were the people who told you that, although they had power to give you these orders, that you could disregard the context of the order?

Examiner Bennett: I will advise you to answer. I say, I advise you to answer. That is a proper question.

A. A buyer—

Examiner Bennett: Of course, if you decline, why, the matter can be stricken from the record.

The Witness: I did not get that, your Honor?

Examiner Bennett: I say, I advise you to answer.

The Witness: To answer, yes.

A. The buyer of Kirby, Block & Fischer.

Q. What is the name of the buyer for Kirby, Block & Fischer that told you that notwithstanding the fact that this order had this warranty stamp on it you should disregard it? A. Mr. Herman Levine.

Q. Mr. Herman Levine? A. Yes.

Q. Is Mr. Herman Levine still with Kirby, Block & Fischer, to your knowledge? A. Yes, sir.

1436

Q. Now, who else told you that? A. Miss Dunkleman of Weil & Hartman.

Q. Where is Kirby, Block & Fischer located? A. 128 West Thirty-eighth Street.

Q. Where does that buyer—what is the name? A. Levine.

Q. Where does that buyer Levine make his office? A. With Kirby, Block & Fischer.

Q. As to the second concern that you have mentioned, where is their office? A. 128 West Thirty-first.

Q. What was the buyer of Weil & Hartman's office that told you that your company could disregard the warranty; what was the name? A. Miss Dunkleman.

Q. Do you know Miss Dunkleman's first name? A. 1437
Lola.

Q. Lola Dunkleman. What is some other buyer's name?

Mr. Ballon: Your Honor, just a moment, before this line of interrogation proceeds any further, may I have an opportunity to consult with the witness with regard to his rights on this particular subject?

Examiner Bennett: Yes.

1438

Ben B. Hirsch—For Commission—Cross.

Mr. Weisman: May my exception be noted on the record, that I object to counsel privately consulting with the witness while he is under cross-examination.

Examiner Bennett: Yes.

Mr. Weisman: And I submit—

Examiner Bennett: Yes—well, he is not counsel for the Commission.

Mr. Weisman: Well, he is counsel for the witness.

Examiner Bennett: Yes.

1439

Mr. Weisman: And I submit I am entitled to interrogate the witness on so vital a question of veracity as this without giving him the benefit of counsel.

Examiner Bennett: All right, he may have the benefit of counsel; go ahead.

Mr. Weisman: May I then make the further request that any conference between this witness and this lawyer be on the record so that the Commission may see the subject matter of this colloquy in the midst of my examination?

Mr. Ballou: I would be glad to make that public.

Examiner Bennett: All right.

Mr. Weisman: All right. Go ahead.

Examiner Bennett: All right. You may do so.

1440. *By Mr. Ballou.*

Q. Mr. Hirsch, I just want you to be fully cognizant of the possibility of jeopardy you place yourself in by mentioning the names of these people on the record, not from a technical viewpoint, but rather from an economic viewpoint, in so far as it may result in repercussions in the future. I want you to be presented with the full extent of the consequences—

Mr. Weisman: May I interrupt just a moment. Now, I submit from the statement of counsel made thus far, it is perfectly apparent that such statement is entirely improper, extra legal, is not the proper subject matter for legal advice, that any witness who tenders himself, or is tendered, by the Commission, is sworn to tell the truth and cannot find recourse in the statement that the truth, if further pursued might do him injury in his business. He should have thought of that when he made the first statement.

Examiner Bennett: Yes. Well, I, of course, overrule your objection. I will let his counsel continue with giving him advice if he thinks it necessary.

1442

Mr. Ballon: Thank you, sir.

Just one further admonition, Mr. Hirsch, that is, from the legal aspect. It is very possible that you might leave yourself vulnerable to a suit for damages in a civil suit, by reason of your mentioning the names specifically of buyers who thereafter might be discharged by their employers and institute suit against you.

I do not intend to pass judgment on the merit of such a case, I am simply wanting you to bear that in mind as an additional factor to be considered by you if you mention the names of these buyers.

The Witness: May I answer?

1443

Mr. Ballon: No.

Mr. Weisman: No.

Examiner Bennett: No, that is not necessary.

The Witness: That is what I meant before.

Examiner Bennett: You are simply getting the advice of your counsel.

The Witness: I understand that. I did not mean answer—

1444

Ben B. Hirsch—For Commission—Cross.

Examiner Bennett: You will be guided by that or by the advice of the—

The Witness: That is exactly what I meant when I made the remark before, when I objected to making the statement when you ordered me to.

Examiner Bennett: All right.

By Mr. Weisman,

Q. What other buyers did you receive instructions from that notwithstanding the fact that these orders that they were tendering you contain this warranty clause, that you might disregard them? A. In view of my attorney's admonition, I would like to consult with him before I give you any additional answers on that.

Mr. Weisman: I ask that the witness be directed to answer.

Examiner Bennett: I have advised him that if he remembers others to give the names, that is the—

Mr. Weisman: The Court has directed you to answer.

Examiner Bennett: The Examiner hasn't any jurisdiction.

The Witness: I don't remember of any of them.

By Mr. Weisman,

1446 Q. You don't remember. A moment ago before your counsel— A. No.

Q. —made that admonition to you— A. No, sir.

Q. Are you truthful in your statement that you don't remember? A. That is correct.

Q. And that is the best answer that you can give? A. That is right.

Q. All right. We will see whether we can refresh your recollection. But you are certain that these two people did give you that information? A. That is right.

Q. Did any buyer representing Frank & Seder tell you at any time that you could disregard the warranty stamp?

A. No, sir.

Q. Did any buyer representing the Kresge Department Store tell you at any time that you could disregard the warranty stamp on the orders that they were placing with you? A. I don't remember.

Q. Who is the buyer for the Kresge Department Store? A. I don't remember. My brother waits on them.

Q. How much business did you do, do you do, with the Kresge Department Store, a year? A. Not very much.

Q. Well, how much would you say? A. Two thousand dollars.

1448

Q. Two thousand dollars a year or a season? A. A year.

Q. And you want to tell us at this time that you do not remember the name of the buyer for the Kresge Department Store? A. That is right. I don't do—I don't do very much of the selling; my brother looks after that.

Q. I do not ask you that. I ask you whether or not you do not remember the name of the buyer? A. It may—I believe it was Mr. Phillips.

Q. Did Mr. Phillips at any time tell you that notwithstanding the warranty stamp on these orders, that you could disregard them? A. He did not.

Q. You are certain as to that? A. That is right.

Q. Who is the buyer representing the Leah Rubenstein shops? A. Kirby, Block & Company, Herman Levine, the gentleman I spoke to you about before.

1449

Q. Who is the buyer representing the Palace of Kansas City, Mo.? A. May I look at the order? I will refresh my memory as to whose office that is (counsel hands exhibit to witness). A. It is one of the offices, and I do not remember which one it is.

Q. Would you say that the buyer for that concern advised you to disregard the warranty stamp on the order? A. I can't say that they did. I don't know.

1450

Ben B. Hirsch—For Commission—Cross.

Q. Well, then, would you say that they did? A. I don't know who the office is that bought it; I don't remember.

Mr. Weisman: Then at this time I move that this witness' testimony with regard to Frank & Seder, the Kresge Department Store, and the Palace Clothing Store, that he was advised by the buyers to disregard the warranty stamp, be stricken out.

Examiner Bennett: Well, I think that he did not so testify. I think his testimony was that some of the buyers—

Mr. Weisman: Well, that—

1451

Examiner Bennett: —and he has met that situation.

Mr. Weisman: All right.

By Mr. Weisman.

Q. Who is the buyer for Carson, Pirie, Scott & Company? A. Mr. Brown.

Q. Where is Mr. Brown's office? A. Chicago.

Q. Where did he come to buy? A. At our place of business.

Q. The sale was transacted at your place? A. Yes, sir.

Q. And there consummated? A. That is correct.

Q. And you there saw him? A. I saw them there, yes.

1452

Q. Did Mr. Brown of Carson, Pirie, Scott & Company tell you to disregard the warranty stamp on his order? A. He didn't tell it to me.

Q. Who is the buyer for Kline's, St. Louis, Mo.? A. I forget her name; she is in the New York office.

Q. What New York office is she in? A. Kline's Service Company, West Fortieth Street.

Q. What was her name? A. I don't remember.

Q. Did she tell you to disregard the warranty stamp even though it was placed on the order? A. I did not wait on her; my brother did.

Q. Well, did your brother say to you, in words or substance, that she had told you that you might disregard this warranty stamp? A. No, he did not.

Q. Did you ever get any information, then, with regard to Kline's buyer that they were placing this stamp on their orders that you might disregard it? A. I did not.

Q. Who is the buyer for Snellenburg & Company? A. Miss Goldsmith.

Q. With what office is Miss Goldsmith located? A. L. Snellenburg & Company.

Q. They have a New York buying office? A. No, they have not.

Q. Did you see— A. They may have. I don't think they have.

Q. Did you see Miss Goldsmith when you obtained this order? A. My brother waits on her.

Q. Where was she waited on? A. In New York at our place.

Q. She there gave the order? A. Yes.

Q. Did you ever hear from anybody that she had stated to your brother, in words, or substance, that you could disregard the warranty? A. No.

Q. Who is the buyer for Marshall Field & Company? A. I don't recollect.

Q. You don't remember the buyer from Marshall Field & Company? A. That is correct; my brother waits on her.

Q. Do you know her name? A. I don't at this time.

Q. Will you find it out for us tomorrow? A. Absolutely (Witness makes note).

Q. Did your brother ever tell you, in words, or substance, that the buyer from Marshall Field & Company had stated that you might disregard this warranty appearing on their orders? A. No, he did not.

Q. Who is the buyer for Jordan Marsh & Company? A. Miss Gateley.

1456

Ben B. Hirsch—For Commission—Cross.

Q. Did you see Miss Gateley? A. I may have seen her, but I don't wait on her; my brother does.

Q. Where is she waited on? A. In our place of business.

Q. That is where you also make your office? A. That is correct.

Q. Did your brother ever tell you, in words or substance, that Miss Gateley, or anyone else acting for and on behalf of Marshall Field & Company, has stated that you might disregard the warranty? A. He did not.

Mr. Weisman: I mean Jordan Marsh.

The Witness: Whether my brother stated it to me, you are asking?

1457

By Mr. Weisman.

Q. Yes, or anybody else? A. No, he did not.

Q. Now, of all of the people that you did business with, the only ones whom you can remember, as having stated to you that you could disregard this warranty, were the two you have mentioned? A. When I say disregarded, there may have been others that told me "Just forget about it."

Q. Well, who? A. If that is what you mean by disregard, forget about it, forget to put the stamps on.

Q. Who told you that you could just forget about it? A. I gave you the two names of the two persons.

1458

Q. I asked you whether anybody else told you that you could just forget it? A. I can't—I can't recollect at this time.

Q. Do you remember anybody that told you that you could just forget it? A. I gave you the names of those that did tell it to me.

Q. Well, is there anyone else, that is what I am trying to find out.

Mr. Martin: Your Honor—

A. I can't remember anyone else.

Mr. Martin: I object.

By Mr. Weisman.

Q. How many customers in all; would you say, appear on your ledgers? A. Oh, I imagine a thousand.

Q. A thousand? A. I imagine so.

Q. Your do business with a thousand different concerns?

A. Yes, sir.

Q. And out of these thousand different concerns but two buyers are, the sum total of your present recollection of those that told you that you could disregard the buying order? A. Excuse me.

Q. Is that correct? A. Remember that one—

Q. No, is that correct? A. One of these buyers represents a hundred accounts.

1460

Q. Which buyer represents a hundred accounts? A. Kirby, Block & Fischer represents a hundred accounts.

Q. Did Kirby, Block's buyer tell you that you could disregard this with regard to every order they placed with you, or only with regard to certain particular orders? A. It is just in reference to one particular order that I remember asking them "What is doing about the stamp?" and he said, "Forget about it."

Q. That is as to one particular order? A. That is correct.

Q. How many orders did you receive a year, would you say, from Kirby, Block & Fischer? A. Oh, in the hundreds of them.

Q. In the hundreds of them. And out of these hundreds of orders that you received from Kirby, Block & Fischer, the buyer told you that as to one particular one you could disregard the warranty? A. All he said—

1461

Q. Is that so? A. All he said—

Q. Is that correct? A. Please.

Q. No, just a moment. A. I can't answer it that way.

Q. Well, we will try— A. If he meant forget it.

Q. Just a moment. If you won't answer it that way—

A. Go ahead.

1462

Ben B. Hirsch—For Commission—Cross.

Q. —we will reduce it to a phrase in which we hope you can answer it. A. Go ahead.

Q. See whether this is correct. It is correct that you have approximately a thousand accounts on your books?

A. I think so.

Q. It is correct that you can only remember two buyers that told you that you could disregard the substance of the warranty clause? A. All they said is, "Just forget it"——

Q. All right, all right. A. If that means——

Q. "Forget it." We have agreed on it. A. If that means "disregarded," they said "forget."

1463

Q. "Forget it"? A. Yes.

Q. Now, you cannot remember anybody else who told you to forget it? A. No.

Q. Now, is it also true as to Kirby, Block & Fischer they represent about a hundred of your accounts? A. I dare say; yes, sir.

Q. Do you now state that the words "Forget it" applied to all of those hundred accounts, or just to the one particular account you referred to a moment ago? A. I inferred—I don't know what he may have meant, but I inferred that it referred to any orders that I might get from that buying firm.

Q. Did you ever query him further on that? A. No, sir.

Q. Now, what would you say is the total amount of business that you did in 1935? A. \$578,000 approximately.

1464

Q. How many garments would you say that you shipped during the year to do that business, roughly speaking; about a hundred thousand? A. A little less than that, I suppose; I suppose eighty-five or ninety thousand garments.

Q. Let me see. You sold your merchandise to some people for 6.75 and to others for 6.62½, you testified. A. To just a few for 6.62½.

Q. Was that 675 net or 675 gross? A. Less 8 per cent.

Q. Less 8 per cent., and 8 per cent. off that would bring the cost of the garment down to about 612; is that right?

A. 612.

Q. 621 from 662? A. No, from 675.

Q. Ah, but how much from 662? A. Well, let us figure it out.

Q. Don't you know from your trade practices, without figuring? A. No.

Q. What your 662 garment— A. No, because it is so little I have to study it; I can tell you about 675, because that I know, but very, very little on 662.50. The way I make it, it comes down to 618.

Q. You said you did a very little business at 662.50? A. A few accounts.

Q. Well, didn't you give the 662.50 business to those houses where you got the biggest volume? Wasn't that the purpose of this reduction in price?

Mr. Martin: Just a moment. I object to this, your Honor. This is not proper cross-examination.

Mr. Weisman: Here is a witness—

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: You may have the exception.

By Mr. Weisman.

Q. What was the basis of this reduction in price that you gave to some? 1467

Mr. Martin: Same objection, your Honor.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: We are not going into that question now.

Mr. Weisman: All right.

1468

*Ben B. Hirsch—For Commission—Cross.**By Mr. Weisman.*

Q. By the way, who was the buyer for the Associated Merchandising Corporation? A. Miss Dean.

Q. Did Miss Dean ever tell you that you could disregard or forget—

Mr. Martin: Just a second, Mr. Weisman. Excuse me, for interrupting. I thought you were through.

(Question read.)

By Mr. Weisman.

1469

Q. —the warranty that was on their orders? A. No.

Mr. Martin: I object to that question as being improper, and mere repetition. He has asked him two or three questions—

Mr. Weisman: I am going to find-out—

Mr. Martin: Just a second.

Mr. Weisman: Pardon me.

Mr. Martin: He has asked him three or four times and the witness has definitely stated the names of all buyers who told him that statement. Now, he keeps asking him the same question.

Mr. Weisman: No, I do not.

Mr. Martin: After getting two or three answers to it, he is just asking him the same thing over again.

1470

Mr. Weisman: I submit, now that I have a particular buyer, I can ask whether the particular buyers asked for that, as well as going down the line. We have had a lot of questions.

Examiner Bennett: I sustain the objection.

Mr. Weisman: May I have an exception?

Examiner Bennett: You have been over that. Yes, you may have the exception.

By Mr. Weisman.

Q. You did a large volume of business with the A. M. C. Stores? A. I testified yesterday that I was sorry to say that I did not do very much business with them, but I hoped to build it up.

Q. You are giving them a lot of copies.

Mr. Martin: I object to that, your Honor.

A. That is a silly question.

Mr. Weisman: Now—

Examiner Bennett: All right, withdrawn, as I understand.

By Mr. Weisman.

Q. Now, tell me, who is the president of the Melba Dress Company? A. William B. Hirsch.

Q. Is he related to you? A. My brother.

Q. Who is the vice president? A. I don't believe there is a vice president—secretary-treasurer.

Q. And you are secretary and treasurer? A. That is right.

Q. And you maintain your office in New York? A. That is correct.

Q. And that is at 1395 Broadway? A. —75 Broadway.

Q. 13. How long have you had your office there? A. Four years.

Q. Four years? A. Yes.

Q. That is your place of business? A. That is right.

Q. Do you have a show room? A. That is right.

Q. Where is your show room? A. At 1375 Broadway, on the ninth floor.

Q. Do you make up a catalog? A. I beg your pardon, on the third floor we are now; we were on the ninth floor.

1474

Ben B. Hirsch—For Commission—Cross.

Q. I see. Do you make up a catalog of your styles from season to season? A. Catalog? We issue a circular once in a while.

Q. Now the merchandise that you received the return of from Leah Rubenstein, was by order placed with you by Kirby, Block & Fischer; is that correct? A. Correct.

Q. And Kirby, Block & Fischer's place is where? A. 128 West Thirty-first.

Q. Did you go to Kirby, Block & Fischer's office? A. My brother takes care of that office.

Q. Well, did they come to you or did you go to them? A. Oh, we go to them pretty often to solicit business, but they usually come up to our place to place the orders.

1475 Q. So that— A. Sometimes—

Q. So that you are not certain whether the order was placed in your office or in their office? A. This particular order?

Q. Yes. A. Might have been placed down there—

By Mr. Weisman.

Q. Now, with regard to Jordan Marsh Company, Massachusetts, referred to in Commission's Exhibit 276-A, did you receive that order in New York City; in your New York City show rooms? A. Yes, sir.

Q. You received it from the hands of the buyer? A. I believe so.

1476 Q. Was the same true with regard to Commission's Exhibit No. 295? A. I believe so.

Q. Is the same true with regard to Commission's Exhibit No. 293? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 286? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 292? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 276-A? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 298? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 297? A. I believe so. You are referring, of course, to the orders?

Q. Yes. A. This refers to.

Q. Yes. A. Yes.

Q. Was the same true with regard to Commission's Exhibit No. 296? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 300? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 299? A. I believe so.

Q. Was the same true with regard to Commission's Exhibits Nos. 303-A, B, and C? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit Nos. 301-A and B? A. I believe so.

Q. Was the same true with regard to Commission's Exhibit No. 302-A? A. I believe so.

Q. As a matter of fact, you take and receive all of your orders in your show rooms, like any other New York City manufacturer? A. Excepting re-orders.

Q. Yes? A. Which do come in by mail at times.

Q. Well, I believe you also testified that you made about 85,000 garments in the year 1935? A. That is right.

Q. And you also testified, did you not, that about four per cent. were returned in August, 1935—no, that was the percentage—is that so? A. Let me get my data out, please (referring to papers).

Q. I will read from the record, if it will help you. A. I have it here. In August of 1935, 4 per cent., approximately 4 per cent., within a very small fraction, was returned, of the sales.

Q. Now, you also testified that your returns were due to late deliveries, imperfections in materials, and cancellations? A. That is correct.

Q. Now, in the month of August, 1935, did you receive the return of any of your merchandise by reason of Guild complaints? A. Not much in August, 1935, if any.

Q. Did you receive any? A. I can't say that at this time; I don't know.

Q. Now, you further testified that in 1935, your returns were 6 per cent; is that correct? A. In 193—in September, you mean?

Q. Yes. A. In September of 1934 they were 6 per cent., and September of 1935 7 per cent.

Q. In 1935, September, 7 per cent.? A. Right.

1481 Q. What is 7 per cent. of your total number of units? How did you arrive at 7 per cent.? A. From my total amount in dollars and cents of what were shipped, the total amount in dollars and cents of what was returned, giving me the percentage of 7 per cent.

Q. Do you know how much of that 7 per cent. return was due, if any, to Guild complaints? A. Probably a half of one per cent., or three fourths of one per cent.

Q. Well, let us see. You shipped about 85,000 garments; is that correct? A. When? Are you referring to the month of September, 1935?

Q. During the year, how many garments did you ship? What were your total shipments in September, 1935? A. \$77,799.32.

Q. Well, that would be approximately 12,000 garments; is that correct? A. That is right.

1482 Q. And 7 per cent. of 12,000 garments would be how many garments? A. 840—wouldn't it?

Q. That is right. Now, do you state that of the 840 garments that were returned, 50 per cent. of the said returns, or a total of 420 garments were—

Mr. Martin: I object.

A. No, I did not.

Mr. Martin: I object to that; the witness did not testify.

Mr. Weisman: I have not finished. If he did not so testify, say no. You don't have to object. Let us see.

Mr. Martin: I object on the ground it is a misleading question.

Mr. Weisman: What is that?

Mr. Martin: I say, I object to that on the ground—

Mr. Weisman: Nothing misleading about it. I asked him if that was a fact, or if it was not.

Mr. Martin: He testified—

Mr. Weisman: Let us see.

By Mr. Weisman.

Q. Didn't you testify in answer to my question that in your opinion 50 per cent. of the returns in September, 1935, were due to Guild complaints? A. Of course not.

Q. Well, what did you say about the Guild complaints? A. I said that the increase in percentage of returns from the year 1935, for September, 1935, as compared to the month of September, 1934, which was 1 per cent. of the—in proportion of the returns to the sales, about three fourths of that would be due, the difference would be due to the Guild's activities in urging customers to return it. In other words,—

Q. Well, didn't you— A. —if in September, 1935—

Q. All right, I follow you. A. O.K., then. If you want me to call—

Q. What would that be in numbers? A. We got back approximately 800 dresses—

Q. No, 840, on your own statement. A. Say 840 dresses; I haven't got the exact figure, except in dollars and cents. 840 dresses, 1 per cent. of that.

1486

Ben B. Hirsch—For Commission—Cross.

Q. One per cent. of that would be 84, wouldn't it? A. No, one per cent. is eight.

Q. Oh, eight? A. Eight dresses.

Q. So that it is your statement that due to the activities of the Guild, in September, 1935, you got four more dresses back than you got in the prior year; is that right? A. I cannot say exactly, but I believe it is more than eight dresses.

Q. What? A. I believe it is more than eight dresses.

Q. You just testified it is half of one. A. All right, would be eight dresses, let it go at that.

1487 Q. That would be a 4 per cent. A. I said about half to three fourths of one per cent.

Q. And half of three fourths was from four to six. A. Oh, it is conjecture, anyway.

Q. Oh, this testimony of yours as to the effect of the Guild's program upon your returns is conjecture, is it? A. No, it is based upon—

Q. Didn't you say a moment ago it was conjecture? A. I said 1 per cent., there, it is a difference, out of 850 dresses, whether I get back two dresses, four or five less, I mean after all you can't pin it down to that specific amount.

Q. Didn't you keep a record of the returns you got back by reason of the Guild complaints? A. I did not.

1488 Q. You have no record? A. I have a record of exactly what the reasons for the returns are, explaining in those particular instances where we have taken out these Guild complaints.

Q. In other words, the only record that you have of returns due to the Guild's activities are the records that you produced today? A. Not at all. There may be—

Q. What other records have you? A. There may be duplicates, there may be similar complaints, rather, similar returns made. When Mr. Ballon asked me to prepare and get out some of these returned slips from our customers

which were returned, representing merchandise that was returned, because of the Guild's activities, within a short time we got him out some of these complaints. ~~Whether~~ they represent all that I have got, I cannot say at this time, I am sure they don't. There must be a lot more.

Q. Well, can you, with any degree of certainty, tell us of these returns that you had in September, 1935, how many of them were due to late deliveries? A. I cannot, with any degree of certainty tell you that, no.

Q. Can you, with any degree of certainty, tell us how many of them were due to imperfection in materials? A. With a degree of certainty, I can't, no.

Q. Can you, with any degree of certainty, tell us how many of these returns during the month of September, 1935, were due to cancellations? A. No, sir; I cannot with a degree of certainty. 1490

Q. Now, in the month of October, 1935, you stated that your returns went up 1 per cent. against 1934? A. Correct.

Q. What was your total volume in October, 1934? A. In dollars and cents?

Q. First in dollars and cents. A. \$54,904.49, shipments.

By Mr. Weisman.

Q. What was your total volume in October, 1935? A. \$70,004.38 and—that is the sales—and \$7,272.23 returns.

Mr. Weisman: I move to strike that out. I did not ask the witness anything about returns. It was just a voluntary contribution, and I do not care for it. 1491

Examiner Bennett: You want to strike out the latter part of the answer?

Mr. Weisman: Yes, sir. I asked him what his volume was, and I did not ask him anything about returns.

Examiner Bennett: It may be stricken.

1492

*Ben B. Hirsch—For Commission—Cross.**By Mr. Weisman.*

Q. How many garments would you say that that represented? A. The net sales or the gross sales or the returns or the sales, or just what do you want?

Q. Do you remember the question that I first asked you? A. You asked me to give you the total amount of sales which was \$70,000 odd dollars, which represented about—

Q. Is that all I asked you? A. No, and that you—

Q. You went too far—you only had to repeat my question, to— A. Well, I am just trying to give the facts.

1493 Q. You will not have to repeat my question if you will just answer the question that I ask you. Please do not go beyond that. It is quite unnecessary. A. I am seeking to give the facts as I have them. You did not tell me you only wanted the sales, or just what you did want. I did not know whether you wanted the sales or returns or when or how or just what you wanted.

Q. I only wanted what I asked for. I only asked you for that one thing, did I not? A. Yes, I guess you did.

Q. How many garments would you say were returns? A. Do you want me to tell you how many garments there were?

Q. Yes. A. There were about 10,500.

Q. How many garments would you say were returns of that group?

1494

Mr. Martin: For what period?

Mr. Weisman: The period we are addressing ourselves to, namely, October, 1935.

A. About 1,100 garments.

Examiner Bennett: I think you have now got to let in all of the other things which you asked be stricken out. In other words, you asked that certain things be stricken out, and in view of your latter questions just asked, I think it should be in.

Mr. Weisman: I think they are all subsequently in the record. The reason I asked that they be stricken out was because they were not responsive to the question.

Examiner Bennett: I know, but you have not established that anywhere. I think they have been stricken out of the record. By asking these extra questions I do not think you have stated all of them.

Mr. Weisman: I think so, your Honor.

Examiner Bennett: I will withdraw my ruling on those two things and let them stand. Go ahead with your examination.

By Mr. Weisman.

1496

Q. How many garments did you say were returned in October, 1935? A. About 1,100.

Q. Of those garments that were returned can you tell us with any degree of certainty how many of them were returned because of late deliveries? A. No.

Q. Can you tell us with any degree of certainty how many of them were returned by reason of imperfections in materials? A. No.

Q. Can you tell us with any degree of certainty how many of them were returned by reason of cancellations? A. No.

Q. Would the same thing be true with regard to the month of November, 1935? A. Yes.

Q. Now, would the same thing be true with regard to the month of December, 1935? A. Yes, sir.

1497

Q. Do you know as a matter of fact whether any dresses were returned to you during the month of December, 1935, because of a complaint of the Guild? A. There were dresses returned. I do not know the specific cases, but I know they were returned in December.

Q. What fixes in your mind that during the month of December, a year and approximately seven months ago,

1498

Ben B. Hirsch—For Commission—Cross.

there were returned to your dresses because of activities of the Guild? A. Oh, no, it is not a year and seven months at all. It is just seven months.

Q. Seven months; I beg your pardon.

Mr. Martin: It is only seven months.

Mr. Haycraft: Seven months.

Mr. Weisman: I know, I know, I know.

A. Now, I have not finished with your question. I should like to finish it.

By Mr. Weisman.

1499

Q. Yes. A. Because from August, commencing 1935 until the Guild—until the Federal Trade Commission had charged the Guild with being a combination, and so forth and so forth, every month we were getting some returns on account of their activities. I am sure of that.

Q. How do you account for the fact that you have not produced a single piece of evidence here showing any returns subsequent to November, 1935? A. I believe it was in November, 1935, that Mr. Ballou asked me to get him together all of the data with attendant papers with which to file our complaint about the Guild with the Federal Trade Commission, and of course I could not give him any subsequent data which we received.

1500

Q. Do you not know as a matter of fact that there was no merchandise returned to you subsequent to November, 1935? A. That is not the fact in my opinion.

Q. Will you examine your records between now and tomorrow and see if it is not a fact exclusive of what your present information or your present opinion may be? A. Yes, I shall be glad to do so.

Q. And if you find it to be a fact will you tell us so? A. Yes, I shall be glad to do so.

Q. At the opening of the examination yesterday, Mr. Martin asked you whether you remembered. A. I beg your pardon.

Q. I will go to this first and we will come to that later on. At the very opening of the examination yesterday Mr. Martin asked you whether or not you appeared here pursuant to a subpoena. A. Yes.

Q. Do you remember that question? A. Yes.

Q. You answered bravely "Yes." A. I answered that "yes," whether it was bravely or not I do not know. What do you mean by that?

Q. I just did not want you to give us the information that you would not appear here if you had not been subpoenaed, served with a subpoena unless that is so. Is that so?

1502

Mr. Martin: I object. Improper cross-examination.

Mr. Weisman: May I ask the questions? In the first place, I would like to know the purpose of this objection.

Mr. Martin: Certainly. I object as improper cross-examination.

Mr. Weisman: Why do you ask the question then of the witness on direct examination? Just let me read this question to your Honor which appears at page 487 of the record.

Examiner Bennett: I remember the question very well. I will overrule the objection. Proceed.

1503

By Mr. Weisman.

Q. You did not need a subpoena to come here, did you?
A. If the Federal Trade Commission had asked me to come whether by telephone or subpoena or otherwise, I would have been here.

1504

Ben B. Hirsch—For Commission—Cross.

Q. As a matter of fact, you just stated a few moments ago that you were one of those which you said initiated the complaint against the Fashion Originators Guild of America, Inc. A. Yes.

Q. You have always been ready to place all of your documents and records and information in the hands of the Federal Trade Commission? A. Of course.

Q. If you thought it would aid your complaint against the Fashion Originators Guild of America? A. Yes.

Mr. Weisman: May I have Commission's Exhibit 93-A?

Mr. Martin: Here they are, Mr. Weisman.

1505

By Mr. Weisman.

Q. Did I understand you correctly to have testified yesterday that with regard to Commission's Exhibit 93-A, that you did business with approximately 70 per cent. of the people listed therein? A. Those are the buying offices; these are the buying offices?

Q. Yes. A. Yes.

Q. These offices are all located in New York City? A. Yes.

Q. Did I further understand you to say that approximately 50 per cent. of your business is done with that 70 per cent. of the people appearing on this list? A. No. Approximately 80 per cent.

1506

Q. Approximately 80 per cent. of your business is done with that 70 per cent. appearing on this list? A. Yes.

Q. Just look over this list a moment and see whether by looking over this list your memory will be refreshed so that you can tell us whether or not any of the people therein mentioned told you that you could disregard the warranty stamp appearing on the order?

Mr. Martin: Now, if your Honor please, he is going into that again. He has gone into that at

length one or two or three times already before, and the witness has testified as to that and told him just whom had told him that he could disregard this stamp and everything about it.

Mr. Weisman: He did not tell me all. He said he could not remember all of them.

Mr. Martin: I object to any further questioning along this line.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception. I should like to urge upon the Court the fact that this witness testified he did not remember any more that occurred, at the moment—he did not say that that was all. If he said that that was all, I think that my friend could be correct. I am showing him a list which he says comprises the people with whom 80 per cent. of his business is done, and I would like to know if after looking at this list of people his memory is refreshed.

1508

Examiner Bennett: The ruling will stand.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Going back for a moment to these returns— A. Yes.

Q. —in total I take it that you had returns in your business during the month of October, 1935, to the number of about 840; is that correct—I mean for August, 1935. A. No, I think you have got that wrong. I think that that was September, because returns were in all about 400 garments.

1509

Q. August, 1935? A. Yes.

Q. August, 1934, about how many? A. August, 1934, there were about 500—to be exact, 475.

Q. 475? A. Yes.

Q. When? A. In August, 1934: the returns were greater in August, 1935.

1510

Ben B. Hirsch—For Commission—Cross.

Q. Were they also—I withdraw that. Was that during that month and up to that time— A. What do you mean by that?

Q. During that month and up to that time you had suffered no injury from the Guild activities? A. Very little.

Q. None according to your own statements? A. None as far as these returns are concerned.

Q. You do not mind telling that if that is a fact? A. No.

Q. That is the fact, then, is it not, that it should be "no"? A. What do you mean by that?

1511

Q. Then, the answer should be no? A. Well, not exactly, because it cost me a lot of money, now, prior to that trying to knock out the Guild's activities with reference to the amendment to the N.R.A. Code at the time, that cost me money. If you say the Guild's activities did not cost me money you are wrong. It did cost me money prior to that time.

Q. You mean the injury and detriment that you say your business suffered. In fixing the injury and detriment you ascribed prior to that time, you ascribe such sums as you spent to appear in Washington to oppose the Guild program before the N.R.A. Administration? A. Only.

Q. Only. A. Up to and including August, 1935, the Guild's activities in that connection cost me a good deal of money to oppose in an effort to defeat their amendment before the N. R. A.

1512

Q. August, 1935? A. That is right.

Q. After August, 1935, and in September, 1935, I think the total number of returns was what—840? A. November, 1935, no, it could not be that. The returns for September, 1935, were \$5,369.00, which would bring it out—let me see—it would be about—yes, that is correct. 840 is right.

Q. 840? A. Yes.

Q. I understood you further to have testified that what percentage of that 840 did you say were due to Guild activities? A. One per cent.

Q. You did not know—I withdraw that. Did you ever go to the Guild to complain about these alleged activities? A. I was asked to come there but I would not go there.

Q. You would not go there but you were asked to go there? A. Yes.

Q. And your reply was you would not go? A. Right.

Q. Were you asked on more than one occasion? A. I can remember just on one occasion.

Q. You knew you were always welcome to go there? A. I was asked by Mr. Post to come over there, or by Mr. Goldston.

Q. Were you not asked by Mr. Post and by Mr. Libby? A. I remember being asked by Mr. Goldston only. I do not remember Mr. Libby.

Q. Don't you remember that with regard to—I withdraw that. A. What?

Q. Drop it. Now, the only information that you had as to the Guild's activities was that which you received from others, which somebody told you; is that so? A. Received to my own business, do you mean?

Q. Yes. For example, you would get a letter from these people that this has been adjudged a copy? A. Yes.

Q. Did you ever go to the Guild and ask them if in truth and in fact they had adjudged this to be a copy? A. I told Mr. Goldston that I did not think they had the authority to tell any customers to return any merchandise to us. As a matter of fact, I told him over the telephone at the time that I intended to hold him responsible for any damage that I might sustain, or that my firm might sustain as a result of that.

Mr. Weisman: I ask that the answer be stricken out because it is clearly irresponsible.

Examiner Bennett: Beginning where?

1516

Ben B. Hirsch—For Commission—Cross.

Mr. Weisman: I ask that everything after "I told Mr. Goldston."

The Witness: Pardon me, I said that I spoke to him over the telephone. I never went to the Guild, and I stated that I never went to the Guild, but I went—I talked to Mr. Goldston over the telephone once. I believe that was my answer.

By Mr. Weisman.

Q. There is no quarrel that that is your answer. I just wanted to object to a certain part of it as irresponsible. A. Oh, well.

1517

Q. What I am seeking to elicit from you is whether or not other than the communications that you received from others such as these Commission's Exhibits Nos. 286 to No. 303, you ever received any information as to the Guild adjudging any of your dresses copies of dresses of their members?

Mr. Martin: I object to that as being immaterial.

Mr. Weisman: Of course it is entirely material to show the worth of those exhibits, that they are completely hearsay, and of no value whatsoever.

Examiner Bennett: No. They are not hearsay.

Mr. Weisman: The matter contained in them is hearsay.

1518

Examiner Bennett: The matter contained in them is not hearsay. It is a matter of exchange in the regular course of business between business men. It is taken as meaning what it imports to mean. That is the reason it is in the record. But, I am going to let you answer the question.

The Witness: What is the question?

Q. (Question read.) A. The answer is that this list, these letters and these complaints and these notices of

returns are the information that I got, with possibly some similar information that I may have in my files as far as my business is concerned.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We will take a recess for 5 minutes.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please.

Mr. Hirsch, you may resume the witness stand.

Mr. Weisman: Where is Mr. Hirsch?

Mr. Martin: He will be here in just a moment, your Honor.

1520

Examiner Bennett: Ask him to step in, please.

Mr. Martin: He is now here, your Honor.

By Mr. Weisman.

Q. What percentage of the orders that you received would you say in the month of September, 1935, had this Guild stamp upon them? A. I believe about 50 per cent.

Q. Fifty per cent.? A. Yes.

Q. Have you made any examination of your orders to ascertain whether or not that is a fair or correct estimate?

A. I have not.

Q. No? A. No.

Q. Did you, pursuant to my request, bring those orders here? A. Yes.

1521

Q. I show you this batch of orders and ask you are these the orders for the month of August, 1929—I mean 1925? A. Well, that stamp started from August 29—

Q. Well, let us see whether we can get them all. A. They go down to September 3.

Q. They start from the 2nd; is that correct? A. This is August 2.

Q. What? A. This is August 2. Do you want September?

1522

Ben B. Hirsch—For Commission—Cross.

Q. I want for the month of August. A. You asked me about September.

Q. Well, start with August. A. Well, the month of August I do not believe there were very many orders placed with the Guild.

Q. What percentage would you say had the Guild stamp on them for the month of August, 1935? A. I cannot really say for the month of August.

Q. Suppose you look through these and tell us. A. I am sorry.

Q. That is all right. A. I have a lot more orders than these here.

1523

Q. This is August. A. This is from August 29; those are from No. 400 down.

Mr. Haycraft: May I suggest that the witness be allowed to withdraw from the stand in order that he may make up the calculation that counsel for the Respondent has asked him to make up. I do not think we can take up the time of this hearing for this detailed examination of hundreds of orders.

Examiner Bennett: It is not necessary to go this detailed examination at all.

Mr. Haycraft: I assumed that you were willing to permit it or I would have objected long ago. I object strenuously to it.

1524

Mr. Weisman: Then, I think I will accept that. Will you stay here after the hearing and go over that?

Mr. Haycraft: I am objecting to the cross-examination and to the propounding of questions of this kind to the witness which would call for him to make a determination of that character, and for him to stay after hours and do all of that work.

Mr. Weisman: I do not want the record to show this necessarily, I am simply talking to this witness who is himself apparently willing to do this.

Mr. Haycraft: Yes. Leave it on the record. I am objecting to the question.

Mr. Weisman: I am not putting any question to him. There is nothing to object to.

Mr. Haycraft: I am objecting to the instructions to the witness or request which you made to the witness.

Mr. Weisman: What are you trying to do, suppress evidence that I am trying to bring in? I do not understand your objection. Just what is the basis of your objection?

Examiner Bennett: If you are going to get into that sort of a quarrel, I will sustain the objection.

1526

Mr. Weisman: I am not having any quarrel with anybody if he would just let me talk to this man. I cannot understand why he is objecting to me talking to him.

Examiner Bennett: The fact of the matter is that it is of no service to anybody to bring in a lot of documents on cross-examination. They are not, strictly speaking, something which may be marked for identification. If not marked for identification, from your own objections they could not be the subject of interrogation. If you want to have him go over his records and then come back, having refreshed his memory and report and testify to that, that is perfectly proper.

1527

Mr. Weisman: That is perfectly correct. That is what I want him to do.

Examiner Bennett: Then let us do it that way and have an end to this.

Mr. Weisman: I will have one of my men stay with him instead of going through each one of these. That was my intention and that is what I was trying to do, and I understood the Court would permit me to do that, and cut out all of this discussion, but

1528

Ben B. Hirsch—For Commission—Cross.

Mr. Haycraft, while I was trying to do that, suddenly interrupted me, and in fact has been constantly interrupting me every time I want to ask this witness if he will do that. I cannot get anywhere with this series of useless and unnecessary objections.

Examiner Bennett: Well, I do not think that is necessary.

The Witness: I will stay here if you will stay here. You are asking me to do a terrific job here.

Examiner Bennett: Off the record. That is enough of that on the record.

1529

(There was a discussion off the record.)

Examiner Bennett: Back on the record. Continue your questions, Mr. Weisman, if you have any further.

By Mr. Weisman.

Q. Mr. Hirsch, did you, pursuant to my request, produce here today all of the orders received by you regularly in the course of your business for merchandise ordered from you from the month, and including the month of August, 1935, down to and through April, 1936? A. Not all of the orders.

1530

Q. What orders did you bring, if any? A. Just the orders that we put on cards for future deliveries and not orders that are shipped out immediately from out of stock, or the same day, because those orders are not indexed and carded, and entered into the books, but are immediately filled and are put into our files, and it would be a terrific job to get those out within the time you allowed me yesterday to get them.

Q. What proportion of your business would you say is done through such orders as you have latterly described?

A. Oh, somewhere between 15 and 20 per cent.

Q. So that you have produced here today the orders covering about 80 per cent. to 85 per cent. of the business? A. That is about right. That is about correct.

Q. Do these orders that you have produced—that is, 80 per cent. of 85 per cent.—constitute a fair cross-section of your business? In other words, generally these apply to the 85 per cent. or 80 per cent. which was produced here; does that generally apply to the 15 per cent. or 20 per cent. that you did not produce? A. I believe so.

Q. So that the 80 per cent., or 85 per cent., that we have here, these give us a fair cross-section of the business you do? A. I believe it would.

Q. Have you produced the orders for the month of August, 1935? A. That percentage that you referred to.

Q. The 80 per cent. or 85 per cent. A. I believe they do; yes, sir. I believe they are here.

Q. Will you look and see whether you have them before you? A. Well, these are just from August 1 until August

7. There may be more in the other files.

Q. Look and see if you have the rest of your files here.

Mr. Haycraft: I object to that as not proper cross-examination, and putting an undue burden upon the witness.

Mr. Weisman: I submit that you brought out the question of orders, and now I have a right to go through them and see what the truth is about the matter.

Examiner Bennett: You can show anything you desire in the ordinary way, but you cannot show anything from those papers under objection on cross-examination.

Mr. Weisman: May it please your Honor, let me call your attention——

Examiner Bennett: I am going to rule that if there is any objection, I am going to not have them

1534

Ben B. Hirsch- For Commission—Cross.

marked for identification, and without marking them for identification you cannot refer to them.

Mr. Weisman: May I simply say this—

Examiner Bennett: One moment. You can prove what you want to prove by these orders by calling this witness as your own witness when the proper time comes. This witness seems to be willing to present these documents. When you are presenting your own case call your witness and make your witness subject to cross-examination.

Mr. Weisman: May I call your Honor's attention to the direct examination of this witness.

1535

Examiner Bennett: They put in a single one of the orders to show the type of the order. You have produced a stack of them that would keep us here for probably a month. I will not entertain it.

Mr. Weisman: I do not want to do that.

Examiner Bennett: I will not entertain it.

Mr. Weisman: May I point out to your Honor the point in the record to which I am addressing myself?

Examiner Bennett: If there is objection to it I will not entertain it. It will not make any difference what you are addressing yourself to.

1536

Mr. Weisman: Does your Honor mean to hold that if it has been testified on direct examination that 50 per cent. of his orders have this Guild stamp on them, I may not on cross-examination produce the original orders through this very same witness and show from the originals that not even 10 per cent. have the Guild stamp on them?

Examiner Bennett: You may not. You cannot show that on cross-examination by calling for the original documents.

Mr. Weisman: I strenuously except to your Honor's rulings.

Examiner Bennett: Not under objection. If there is no objection on the part of the Commission's attorneys, if you want to remain here and go through them, you may do so.

Mr. Weisman: I asked this man to stay here, your Honor, if he would remain here tonight, and in that way we would not take up your Honor's time nor the time of the hearing. I do not want to take up your Honor's time unnecessarily. That would not do it.

Examiner Bennett: If I let the Respondent's counsel on cross-examination go over a mass of stuff like that, why, I do not know how long that would be. You should not ask for something that is utterly unreasonable.

1538

Mr. Weisman: I do not want to call for anything unreasonable. I think we can get this from the witness in 10 minutes, far less time than it takes to argue about it if he wanted to cooperate. Will your Honor for the purposes of the record let me get one month complete and then under your Honor's ruling I will stop?

Examiner Bennett: You may.

By Mr. Weisman.

Q. Will you get together all of the August, 1935, orders that you have here?

1539

Mr. Martin: I object to the introduction of these.

Mr. Weisman: I have not introduced them.

Mr. Martin: I object to instructions to the witness.

Examiner Bennett: I sustain the objection. I am not going into that mass of documents. You can go into them on your direct case when it comes. You can call this witness and contradict anything he said by his own papers.

Mr. Weisman: I wish to make this tender of proof for the record: That if the Court had permitted me to show from these original records produced by this witness for and on behalf of his firm, he would have testified for and on behalf of his firm that in the regular routine and order of business, the regular and ordinary conduct of business on behalf of his firm, if we show that his statement heretofore made that 50 per cent. of these orders contain the Guild stamp was wholly inaccurate, that an infinitesimal part of them contained such a stamp, and not 50 per cent. thereof.

1541

Mr. Haycraft: I move to strike the statement of counsel as having no proper foundation in this case. Counsel does not have any idea what they contain. Counsel does not know and he should not make statements like that when he does not know.

Mr. Weisman: Since when have you become a mind reader? How do you know what I know? How do you know what I have done? As a matter of fact, while you were sitting back there asleep in your chair I utilized the time during recess to go over these just so I could make that statement to the Court and properly. I want to say here and now that I resent the statement by counsel for the Commission that I did not know what I was talking about. I do not mind when it comes from a different source, but I do mind when it comes from that one.

1542

Examiner Bennett: It is not necessary to argue this matter any further.

Mr. Weisman: I demand a retraction from counsel from such an improper statement.

Examiner Bennett: It is not necessary to discuss this further. The tender will stand.

By Mr. Weisman.

Q. Will you keep those records intact between now and the time that the Respondent, Fashion Originators Guild of America, Inc., will present its side of the controversy?

Mr. Haycraft: I object to a question of that character being asked of this witness on the record. If he wants to make some private arrangement with the witness that is another thing.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception. I ask off the record if he will present to the Court when our case comes up his records.

Examiner Bennett: If you want that off the record, will you just ask me about it?

Mr. Weisman: I beg your pardon, your Honor.

Examiner Bennett: The Examiner will direct the Reporter when to be on and off the record. No one else will. Let us have that clear, gentlemen. Off the record.

(There was a discussion off the record.)

Examiner Bennett: Now, back on the record. Have you any further questions, Mr. Weisman?

Mr. Weisman: Yes, sir. Just one or two other questions and then I am done.

By Mr. Weisman.

Q. In your business, do you keep any accurate record, or any record of any kind showing the reason for the various returns that you may have received? A. No, we do not keep a record other than perhaps the letters that we get from customers.

Q. Have you produced today all the letters that you can from customers setting forth the reasons for their returns of merchandise sent to you from the period August, 1935, to date? A. No.

1546

Ben B. Hirsch—Floor Commission—Cross.

Q. Have you such records and letters—

Mr. Martin: I object to that. He has already testified that he would look into his records and produce them.

Mr. Weisman: He has not. He said he would but he has not.

Mr. Martin: He has not had a chance to do so. I asked—

Mr. Weisman: What do you mean? I asked him to do that yesterday.

Mr. Martin: No. That was asked by you this morning.

1547

Mr. Weisman: Will you produce them to-morrow morning?

The Witness: Mr. Weisman, you are asking me for something I do not say it is impossible, but it is terribly harassing when you consider that we have to go through every possible folder of every customer that we have, many of them have been filed away, on the first of the year, and we will find them under three or four tables, and scattered all around. It is a tremendous task. You are putting me to a terrible task. If it is very exceptional and I must get this thing in tomorrow, I will try to do it, but you are asking me for something that in my opinion is harassing to me.

1548

Q. I do not want to annoy and harass you if such is a great trouble to you. However, I feel that I must have it. It is important to this case. I do not think it is necessary for you to bring it here unless I serve you with a subpoena, and I have not served you with a subpoena yet. So, I want to know will you bring it in without a subpoena because it is necessary, we think, for our case, and it is necessary for you to do so. It is not only necessary for our case, but it is vitally necessary, and unless we can have it with

out a subpoena I should like to know that first. A. In view of the fact that it is a tremendously harassing and terribly difficult thing for me to do, I must decline except under subpoena.

Mr. Weisman: That is all for this witness.

The Witness: Your Honor, may I say something?

Examiner Bennett: Yes.

The Witness: Your Honor, I believe in the computation of the figures and answering the percentage of returns where I stated it was 1 per cent. above, 1 per cent. of the amount of the returns as received, I did not consider the fact that it was 1 per cent. of the returns as against the sales.

1550

In the increasing returns in proportion, then, it appears to add to 16 per cent. instead of 1 per cent. on the returns themselves, because 10 per cent.—well, I will put it this way: Instead of 1 per cent. as on the returns themselves, because 10 per cent.—while the sales for the month of October, for instance 1935, were \$70,000, and the returns were \$7,273, the percentage of returns and sales for the month of October is 10 per cent. for 1935, and for the year 1934 it was 9 per cent., but that is the percentage above based upon the percentages of returns as against sales, but not the increase of returns against returns. It does not make 1 per cent., but it brings it up to 16 per cent. when you calculate it that way.

1551

Examiner Bennett: That is a correction of your testimony?

The Witness: Yes, sir.

Mr. Weisman: That brings on another question.

1552

*Ben B. Hirsch—For Commission—Cross—Redirect.**By Mr. Weisman.*

Q. Do you not also want to correct your testimony and state that you have no accurate record as to the number of returns that were due to Guild activities? A. I do not have to correct that. I stated that I have no accurate record of them.

Q. And the best you can do with regard to that is to give your guess or conjecture? A. Yes, sir.

Mr. Weisman: That is all.

Redirect examination by Mr. Martin.

1553

Q. Mr. Hirsch, you have testified that you did accept orders with the Guild stamp on them. A. Yes.

Q. Why did you accept orders with the Guild stamp on them?

Mr. Weisman: I object to that as improper redirect examination. He went into that on direct examination in this way: He was asked what prompted him to accept these orders, if your Honor will remember—of course, if your Honor wants this case tried and retried again and again with each witness, then I am quite content to do so, but I submit it is not proper redirect examination.

Mr. Martin: I think your Honor will find this is a perfectly proper question for redirect examination. He is certainly entitled to testify as to what was his motivation or what caused him to accept orders with these stamps on them.

1554

Examiner Bennett: Overruled.

Mr. Weisman: Exception. I would like to call your Honor's attention to page 517 of the record, where these questions were asked—

Mr. Martin: That was brought out on cross-examination.

Mr. Weisman: My name is not "Martin," so it could not be brought out on cross-examination. The question asked was this:

"Q. What prompted you to make this change in that regard? Did you later accept orders with this stamp on them? A. Yes, sir.

"Q. What prompted you to make this change in that regard?"

I then objected on another ground. Now, I have to object on the further ground that this is not proper redirect examination, but was a part of the direct testimony of this witness.

Examiner Bennett: Overruled.

1556

Mr. Weisman: Exception. I further object on the ground that it is incompetent, immaterial and irrelevant and——

By Mr. Martin.

Q. Go ahead and answer the question.

Mr. Weisman: No. Do not do so until I finish my objection, irrespective of what Mr. Martin tells you to do.

I wish to make the further objection on the ground that it is incompetent, immaterial and irrelevant and that it is not in proper form.

Examiner Bennett: Overruled.

1557

Mr. Weisman: Exception.

By Mr. Martin.

Q. You may answer. A. We took the orders because we had to take them. The buyers——

Mr. Weisman: I ask that the words "We took the orders because we had to take them"—that the

1558

Ben B. Hirsch—For Commission—Redirect.

words "had to" be stricken out as a conclusion of the witness and the witness be directed by the Court to state the facts and not his conclusion.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Martin.

Q. Answer the question. A. Economic necessity made it imperative for us to take the orders, because we could not get them otherwise. The buyers—

1559

Mr. Weisman: I object.

Q. Go ahead. A. The buyers would not leave them without the stamp on them and it was just a question as to whether we would go out of business or accept the orders with the stamps on them.

Mr. Weisman: Now I move that the words "economic necessity" and the words "made it imperative for us to take the orders" be stricken out as a conclusion on the part of the witness and not a statement of fact.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

1560

By Mr. Martin.

Q. Did you—

Mr. Weisman: I further ask that the witness be directed to testify as to what was the facts of these alleged occurrences so that we may have them with some particularity with regard to this matter.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Now, Mr. Hirsch, did the buyers of your products tell you why they had to put stamps on these orders?

Mr. Weisman: I object.

By Mr. Martin.

Q. You may answer that, yes or no.

Mr. Weisman: Do not answer it yes or no or any other way until I make my objection.

I object to that on the ground that it is incompetent, immaterial and irrelevant and ask that counsel be directed not to lead the witness and that counsel be directed to ask the witness what the buyers did tell him in regard to the matter. It is perfectly obvious what the answer will be where counsel leads the witness in this fashion.

1562

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Martin.

Q. What is the question? A. What is the question?

Q. (Question read.) A. As I stated the other day—

Q. Just answer that yes or no. A. Yes.

Q. What did they say to you? A. That they had no alternative but they had to leave the orders with the stamps on them, take it or leave it.

1563

Q. Now, Mr. Hirsch, why did you accept the returned garments? A. Referring, Mr. Martin, to this group of garments that were returned on account of the Guild activities—

Mr. Weisman: I object to the witness referring to anything and ask that he be directed to answer the question the way that it is and not to refer

1564

Ben B. Hirsch—For Commission—Redirect.

to anything else. If he does not understand it he should state that he does not understand it.

Mr. Martin: I will reframe the question.

By Mr. Martin.

Q. Why did you accept garments which were returned to you because it was claimed that they were copies of the Fashion Originators Guild of America, Inc. garments? I had no alternative in the matter. It was either a question of going out of business or not. In fact, it was a question of getting into a fight with my customers, antagonizing them or taking it. I just could not do myself because we cannot afford to antagonize our customers.

Mr. Weisman: I ask that the latter part of the answer be stricken out as irresponsible.

Examiner Bennett: Will you indicate that the latter part of the answer that you wish stricken out?

Mr. Weisman: After the words "I had no alternative in the matter."

Examiner Bennett: It may be stricken. I think it is quite complete up to that point. I think in fact, that that was answered on cross-examination.

By Mr. Martin.

Q. Now, Mr. Hirsch, on cross-examination you stated that you knew the Guild protects copies of imports. Is that the basis of such statement? A. These two (indicating two documents).

Mr. Martin: I ask that these documents be marked Commission's exhibits for identification.

Mr. Weisman: My recollection is that that part of the answer was stricken out. I am urging objection. If this witness is to testify to that, if my friend wants to make this witness his witness.

on that issue, I have no objection to it, but I do want to call the Court's attention to this, namely, that that answer was stricken out as far as the protecting of imports was concerned. He started out to make a statement like that and the Court, upon proper application, struck that portion of it out, and in my opinion very properly.

Mr. Haycraft: I do not think he struck all of that out. He was not allowed to make an explanation of it.

Examiner Bennett: It was in yesterday's cross-examination?

Mr. Weisman: No, sir. It was in the cross-examination this morning.

1568

Examiner Bennett: Ask him what is the basis of his statement.

Mr. Weisman: He has not answered that.

Examiner Bennett: Are you going to answer it?

Mr. Weisman: I take it that another question is being put to him?

Examiner Bennett: I will clear this up myself.

By Examiner Bennett.

Q. What is the basis of that statement? Was it advertisements or newspaper articles or something else? A. One of each, your Honor, in a memorandum, I suppose you would call it, that was sent out by the Fashion Originators Guild of America to—or a copy of the memorandum that was sent out to Mr. Bergdorf, connected with the Associated Merchandising Corporation, who gave me this copy.

1569

Mr. Weisman: I ask the statement be stricken.

Examiner Bennett: What statement?

Mr. Weisman: Your Honor, I ask that the statement by the witness that something was sent to this third party be stricken out, as it is clearly hearsay.

1570

Ben B. Hirsch—For Commission—Redirect.

This witness has no knowledge. The person to whom he refers is within the jurisdiction of the Court. In fact, he has been in the court room two or three or four days. In fact, I think he is in the court room right now.

Examiner Bennett: I will sustain the objection. I am not going to allow you to go into anything unless he knows.

Mr. Martin: I ask that these documents be marked Commission's Exhibits 305-A and 305-B for Identification.

1571

(A mimeographed sheet was marked Commission's Exhibit 305-A for Identification.)

(A clipping from a magazine was marked Commission's Exhibit 305-B for Identification.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 305-A and Commission's Exhibit 305-B and ask you can you identify these? A. Identify them in what respect, Mr. Martin, if I may ask?

Q. Just what are these?

1572

Mr. Weisman: I object to the witness saying what the documents are. The documents are not in evidence as yet. In fact, the purpose of offering any document in evidence is that the Court may say what it is, not the witness.

By Examiner Bennett.

Q. Do you know of your own knowledge what these documents are? A. Yes, sir, I do. This is—

By Mr. Weisman.

Q. Do you understand what the words mean "of your own knowledge"? A. Yes, sir, I do.

Q. Do you understand by what that the Court means of your own direct knowledge, what somebody else told you about it? A. That is what I am going to say. This memorandum that I received from him, together with a letter from the Fashion Originators Guild of America, Inc., to him, had attached to it this memorandum, and it was addressed to his firm. He is in court here right now and I will be glad to turn it over with his permission. Without his permission I would not feel justified in doing it.

Examiner Bennett: I think that the party to whom it was sent is the man to put this matter in by.

1574

Mr. Martin: Do I understand from you—your Honor talks rather indistinctly and I can hardly hear you, and I did not catch it.

Examiner Bennett: I think that if this matter was sent through this other man from the Fashion Originators Guild of America, the respondents here, that he is the man to identify it.

Mr. Martin: I understand that, but I asked—prior to that I asked the question of the witness, "You stated that you knew the Guild protected copies of imports?"

The Witness: -Yes.

1575

Mr. Martin: Now I want to know what the basis of such statement is.

Mr. Weisman: I submit it is improper. The Court ruled with me that he should not state it. It went out.

Mr. Martin: That is what I did not hear and I want to get that straight. That is what I am trying to do.

1576

Ben B. Hirsch—For Commission—Redirect—Recross.

Mr. Weisman: Now that you have it straight, let us go to something else.

Mr. Martin: Yes, I am going to.

By Mr. Martin.

Q. Do you know whether or not the Guild protects copies of imports?

Mr. Weisman: Objected to as calling for the conclusion of the witness and improper redirect examination.

1577

Examiner Bennett: That comes within the redirect examination.

Mr. Martin: I will withdraw the question if counsel objects to it. That is all.

Recross-examination by Mr. Weisman.

Q. Did I understand you to say that all of your buyers said this, "You cannot have these orders unless the orders have this stamp on them"? A. No, sir. I said that a few of the buyers have told me that.

Q. Did you on your direct examination, in answer to Mr. Martin's question, say a few of the buyers, or all of them? A. A few of the buyers.

Q. That is the best recollection of your testimony? A. Yes.

1578

Q. Now, you are certain it was only a few? A. That is right.

Q. And as to the others, that they were in the vast majority; is that so? A. That is right.

Q. Since there were only a few of them, can you remember a few of them, the very few? A. I gave you the names of two of them this morning, or this afternoon.

Q. The two buyers that you have already mentioned? A. Yes.

Q. I asked you to name the buyers with whom you discussed the orders with the stamp, and the same two are the only ones that you can remember who also said to you that they had no alternative but to put them on your orders? A: Yes, yes, if you will allow me—

Q. Answer the question. No, I will not allow you. A. Those are the two buyers, but they represent large organizations.

Q. I did not ask you that, did I? Did I ask you that? A. I tried to amplify that.

Q. You wanted to amplify the question a little, you thought you would help out the Commission a little bit?

A. I wanted to explain to you and to the Federal Trade Commission that these were material customers, one of these represents at least 100 customers. 1580

Q. You said that economic necessity made it imperative for you to accept these orders? A. Yes.

Q. What did you mean by the words "economic necessity"? A. Taking orders, do business or get out of business.

Q. You mean that these people were willing to give you these orders provided you would agree that you would not ship them any copies of dresses or garments made by members of the Fashion Originators Guild of America? A. Not at all. We had no alternative. They said, "Forget it," as I testified several times.

Q. You said only two of them told you that? A. Yes, two, who are the big ones, said "Forget it," and I forgot it completely as to all of them. 1581

Q. What percentage of your business do you do with Kirby, Block & Fischer? A. Practically—you mean, predicated on some percentage?

Q. Would you say it would be 10 per cent.? A. I cannot say offhand, but that is a pretty good percentage.

Q. What in your opinion is a "pretty good percentage"? A. I think you hit it about right.

1582

Ben B. Hirsch—For Commission—Recross.

Q. About 10 per cent.? A. Yes.

Q. In other words, you state that your firm last year sold through the offices of Kirby, Block & Fischer approximately \$58,500 worth of merchandise? A. I have not made the calculations, but I am making an approximation or a conjecture, and that would be my conjecture.

Q. You said that you did a business of about \$585,000 last year? A. Yes.

Q. Do you not think that 10 per cent. of \$585,000 would be \$58,500? A. I am not trying to dispute your calculation as to the percentage. I am stating that 10 per cent. is a conjecture on my part which I believe to be correct, but it is a conjecture that I have not made any figure on as yet.

1583

Q. How much business did you do with the house represented by this other buyer? A. About the same.

Q. Weil & Hartman? A. About 10.

Q. You did about 10 per cent. of your business with them? A. Yes, sir.

Q. As a matter of fact, did not Mr. Levine only require this stamp to be used on certain orders? A. The only orders that I had with Mr. Levine—first, what do you mean by that?

Q. I mean just what I said. Can't you understand that question? A. I can understand any question that is clear. Just repeat it, please.

1584

Q. As a matter of fact, I said Mr. Levine, did he not require only this stamp to be used on certain orders? A. The only conversation that I had with Mr. Levine on that matter was on the first few or afterwards—in any event, just a short time—and I said, "What is doing about this stamp?" and he said, "Forget it. They must be on the orders."

Q. Did you not tell me this morning that Mr. Levine only said you could forget it with regard to one particular

order concerning which— A. That is correct. "Forget about it," he said, and I forgot about it as to everything else then. I did not think about it in regard to the others after that.

Q. What is that? A. I said I forgot about it as to the rest of them then.

Q. Why did you? A. I had to.

Q. When he told you to forget it as to one, you then proceeded on your own initiative to forget about it as to all of them? A. Of course, I was not going to keep questioning everybody every day, because that is what I would call antagonizing him.

Q. That is what you would call antagonizing a customer, to ask a question of him about a matter of this kind?

1586

A. Yes, sir. Certainly.

Q. Then what you meant when you said you did not want to antagonize the buyer, you meant you did not want to ask him any questions? A. I did not want to argue with him.

Q. Is asking a question or arguing a question— A. I beg your pardon?

Q. Is asking and arguing the same thing in your mind?

A. I did not want to lose an order because of any argument about this stamp.

Q. Did he not give you a lot of orders without the stamp? A. I believe that every order that came in after that, practically every order had the stamp on it.

1587

Q. Did all of the orders come through without the stamp, or do you do you not want to hedge your answer?

A. I cannot say. I do not want to hedge my answer. I want to state the fact. I mean in my opinion practically all of the orders placed by them after the month of August were with the stamp, or practically all of them, and those that they did not put the stamp on, those orders that came in were forms which bore the stamp on it. They were pads that had it printed on them.

1588

Ben B. Hirsch—For Commission—Recross.

Q. The stamp was on there in just the same manner that the other items were on the order? A. The same as they bore everything but the writing.

Q. Just the same as they bore the rest of the printed matter? A. Yes, sir.

Q. Did they ever tell you that you could disregard the other printed matter on the order? A. I did not discuss it with them.

Q. Did you ever ask them that? A. No.

Q. I want to ask you once more what was the "economic necessity"—

1589

Mr. Martin: He says he wants to ask that once more. He has asked it once already. I object.

Mr. Weisman: Yes, I want to ask that once more for the simple reason that he did not answer that when I asked him the first time.

Mr. Martin: He answered the question, your Honor.

Mr. Weisman: No, he did not.

Mr. Martin: I object to the question.

Mr. Weisman: You have no question to object to as yet. You have not even permitted me to ask the question.

Examiner Bennett: I will let you ask your question and then he can object to it if he desires.

1590 *By Mr. Weisman.*

Q. What was the economic necessity other than the one you have already described, namely, that you did not want to antagonize them by asking them any questions, which made it imperative for you to take these orders?

Mr. Martin: I object to the question. He is just going back to what he brought out again and going over the thing again. If you will go back to his first question you will see that it is the same thing.

Examiner Bennett: Read the first question.

(Questions and answers were read.)

Mr. Martin: Your Honor, I submit that covers the situation.

Examiner Bennett: I wanted to get the record and see whether it actually covered the question he is now asking. I think that has been answered.

Mr. Weisman: I desire now to go into this further and clarify it in the record. I do not think that that is a correct, or, at least, it is not a full, statement in regard to it, and it leaves the matter in a more or less ambiguous state.

Examiner Bennett: I remember that. That was merely testing that particular statement. Now you have gone back to the original matter again. I sustain the objection to that particular question.

1592

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In August, 1935, was this economic necessity present? A. Not quite as much as it was in September, October and November.

Q. Was it present? A. To some degree.

Q. To what degree was it present? A. I cannot say. It could have been to a very minor degree. I believe it was a very minor interest at that time.

Q. Is the fact that you have looked at these orders that you have produced caused you to refresh your recollection so now you state the economic necessity in August, 1935, was very slight? A. Yes, plus the return percentage, which in August, 1935, was no greater than in August, 1934, and my general knowledge of the thing there was no great activity in August, 1935, on that.

1593

Q. Mr. Hirsch, your returns in August, 1935, bear no relation to the economic necessity for your taking these orders, the returns were uneconomic for your business,

and you stated that an economic necessity arose which compelled you to take these orders; is that so? A. I frankly do not know whether I understand that question or not. If I understand it, I think that is the same question that you asked me before.

Q. That is right. You have given a different answer now and that is why I am querying you about that.

Mr. Martin: May it please your Honor, that is a very ambiguous question, but in my opinion he is talking now about something else which he did not talk about before. He is now talking about returns. That is entirely different.

1595

Examiner Bennett: I will sustain the objection.

Mr. Weisman: I just want to go to a few more months.

Examiner Bennett: I think you have had sufficient cross-examination on this redirect. I will sustain an objection to any further recross on it.

Mr. Martin: Well, we want that motion.

Examiner Bennett: All right, sustained. It is sustained.

Mr. Weisman: All right, I want to get my questions—

Examiner Bennett: We will have to stop this examination somewhere and I think we have arrived at that point with this witness.

1596

Mr. Weisman: Well, I will except to this, your Honor.

Examiner Bennett: Yes.

Mr. Weisman: Then, in view of this redirect examination by Mr. Martin, I submit that now these orders are very material and vital; in other words, the witness has testified—

Examiner Bennett: It is unnecessary to make an argument on that.

Mr. Weisman: Excuse me.

Examiner Bennett: Mr. Weisman, those orders, we are not going to bother with those orders. Now, if you can understand that, why, I wish you would pay attention to it.

Mr. Weisman: Well——

Examiner Bennett: And you may have your exception.

Mr. Weisman: Exception.

Mr. Martin: Your Honor, please, in view of your ruling that you will not permit any further cross-examination of this witness, it now being twenty minutes past 4 o'clock, I suggest that we adjourn until 10 o'clock to-morrow morning. We would not have time to start with another witness at this time.

1598

Mr. Weisman: Well——

Examiner Bennett: I see. Will you have another witness at that time, Mr. Martin?

Mr. Martin: Oh, yes, we will be ready.

Mr. Weisman: I would like it if the hearing could go on to-morrow morning at 10.30.

Mr. Martin: At 10.30?

Mr. Weisman: I have another piece of business that I would like to get finished in between these hearings.

Examiner Bennett: We are attending these hearings, and there isn't any disposition to shorten them on the part of the attorneys, and we will have to put in hours if we are going to have to go over and over details.

1599

(There was a discussion off the record.)

Examiner Bennett: We will adjourn until 10.20 to-morrow morning, because counsel for the respondent has an appointment.

(Whereupon, at 4.30 o'clock P. M., an adjournment was taken until Wednesday, July 22, 1936, at 10.20 o'clock P. M.)

1600

*Saul Lieber—For Commission—Direct.***BEFORE THE FEDERAL TRADE COMMISSION.**

[SAME TITLE.]

Room 901, 45 Broadway,
New York, N. Y.

July 22, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

1601

SAUL LIEBER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is your name, please?

The Witness: Saul Lieber.

Mr. Ballou: May I have my appearance noted as counsel for this witness personally, please?

Examiner Bennett: All right.

Direct examination by Mr. Haycraft.

1602

Q. What is your occupation, Mr. Lieber? A. Manufacturer of dresses.

Q. Are you an official of any corporation? A. President of the Noxall-Waist & Dress Company, Inc.

Q. How do you spell that? A. N-o-x-a-l-l.

Q. Where is the principal office or place of business of that corporation? A. 134 West 37th Street, New York City.

Q. Where does it have its factory? A. On the premises.

Q. What items of dresses does it manufacture? What kind of dresses? A. \$4.75.

Q. You mean that is the price that you receive for the garment? A. That is the price of sale, \$4.75.

Q. Are those ladies' or ladies' and misses' dresses? A. Well, it is misses' dresses exclusively.

Q. To what class of trade do you sell those dresses?

A. Sell to all the department stores and specialty stores through the United States.

Q. Do you have customers in every State of the United States? A. Yes, sir; I have.

Q. What is the procedure or method of sale? How do you obtain the customer, or order? A. Well, we have a showroom, the people call on us in the showroom. We also have traveling salesmen, and also have men that call on the resident buying offices, or when the buyers are in town here naturally we go and meet them at hotels and so on, look for them all over, wherever they can get ahold of them.

1604

Mr. Haycraft: Where are the exhibits?

Examiner Bennett: I want to ask a question.

Will you describe the process of your sale and shipment?

The Witness: I beg your pardon?

Examiner Bennett: I say, will you describe briefly the process of your sale and shipment of goods?

The Witness: The process of sale and shipment?

Examiner Bennett: Yes.

1605

The Witness: Well—

Examiner Bennett: What do you do?

The Witness: Well, when we get our orders, naturally those orders for merchandise are manufactured or filled against the orders, each and every one—every garment has a number, and that is the way when the merchandise comes in from

1606

Saul Lieber—For Commission—Direct.

the factory, it is simply consolidated against all the orders, and then when we get an order for a single shipment we usually make that shipment. Sometimes we ship a part of an order; for instance, we have an order of ten numbers on there, we only get four or five numbers, we think it is a decent, good-sized shipment, so we make the shipment. A few days later, when we get the balance of the styles in, we ship the balance of the order.

Examiner Bennett: You ship through from New York to your customers?

1607

The Witness: We ship them through American Railway, some are sent to New York packing companies; it is according to the instructions on the orders.

Examiner Bennett: All right. Go ahead, Mr. Haycraft.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 93-A, and ask you if you have sold to any of the buying offices who are listed in that exhibit? A. We sell to a good percentage of these here offices.

Q. What is the procedure followed? Do you call at their place of business?

Mr. Weisman: Just a moment.

1608

A. Well, yes, our men call at their place of business, yes—

Mr. Weisman: Just a moment. May I ask that the question and answer be stricken out, and that the prior answer, "We sell to a good percentage," be stricken out.

I submit nobody knows what that means; your Honor might have one opinion and I another. He

shows him a paper with approximately a couple of hundred names. He says, "Do you sell to these people?" The witness says, "I sell to a good percentage."

Now, I do not know what that means.

Examiner Bennett: Will you please read the answer?

(Question and answer read.)

Examiner Bennett: Well, I will let it stand. Make it more specific; follow it up and make it more specific.

Mr. Haycraft: All right.

1610

By Mr. Haycraft.

Q. Will you indicate on that Commission's Exhibit 93-A any of the buying offices that you do not sell to, or you never have sold to?

Mr. Haycraft: I will amend the last question, Mr. Examiner, to a period from 1932 to April, 1936.

A. Well, I can safely say that we sold during that period practically to every office that we see on this, during that period.

Q. Now, then, as to the procedure followed in making sales. You said that your salesmen called on the offices of these concerns. Do representatives of any of these concerns call at your offices? A. Yes, the buyers also call at our office; yes, sir.

1611

Q. Are orders placed by those buyers? A. Orders are placed by those buyers; yes, sir.

Q. And the method you have just described a few moments ago, as to filling orders, would apply as to filling orders from these buyers? A. The same way, the same way.

1612

Saul Lieber—For Commission—Direct.

Q. Do any of these buying offices represent retail merchants located in the City of New York? A. Some do.

Q. Do you know which ones do? A. There is one, Associated Dry Goods, they buy just from certain stores, like McCreery's, they buy in the city here, business is brought through their office.

Q. Well, what other one? A. Well, the majority of them are usually for out-of-town concerns.

Q. Do you know of any other of this group that buys for New York stores, exclusively? A. Well, this is not exclusively for—Associated Dry Goods is not exclusively for New York City only.

1613

Q. It is not? A. They also buy for out-of-town accounts, too.

Q. Are there any of those buyers listed on that exhibit who buy exclusively from New York stores? A. No, sir.

Q. As a matter of practice in filling orders received and accepted, listed on this exhibit, to whom you sell, where are the goods shipped? A. The goods are shipped—wherever their accounts are located, those are the stores they are shipped to. Mostly out of town, every part of the United States.

Q. Now, you have said that you manufacture a \$4.75 line of dresses? A. Yes, sir.

Q. How many years have you been in that business? A. Twenty-two years.

1614

Q. How long have you been manufacturing that particular line, \$4.75? A. Since 1933. Prior to that I was making \$6.75 merchandise.

Q. \$6.75? A. Yes, sir.

Q. In the conduct of your business, have you had any dealings at all with the retail dealers who are co-operating with the Fashion Originators Guild of America, Inc.—A. (Interposing) Yes, sir; I did.

Mr. Haycraft: I have not finished my question.
The Witness: Pardon me.

By Mr. Haycraft.

Q. —in the campaign of the Guild to eliminate what is known as style piracy?

Mr. Weisman: I object to the form of the question as being an incompetent, irrelevant and immaterial qualification by this interrogator, as to the Guild's policy, calling for a conclusion of the witness obviously framed upon a conclusion of the interrogator.

Examiner Bennett: Will you read the question? (Last question read.)

Examiner Bennett: Why, the question is all right except that it assumes a foundation. I wish you would make a foundation for the question and re-ask the question. That is, if he knows anything about that campaign.

1616

Mr. Weisman: Yes.

A. Well, the only—

Mr. Weisman: No, no, the Court has just said you are not to answer that question.

The Witness: I beg your pardon.

Mr. Weisman: At the present time.

By Mr. Haycraft.

Q. Did you ever hear of the Fashion Originators Guild of America, Inc.? A. I did.

1617

Q. When did you first hear of it? A. Well, the first I heard of it was the—that it interfered with my business, was in the month of September, 1935.

Mr. Weisman: I ask that the early part of the answer be stricken; he was asked when did he first hear of it. He testified he first heard of it in the

1618

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latter part of 1935. That is the answer to the question. The rest is mere surplusage.

Examiner Bennett: All right; denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. How did it come to your attention? A. It came to my attention when the buyers used to come in and place orders, and the only way that they wanted to place orders with us, providing we will accept their orders with a stamp on that they actually guarantee that these are not—these are merchandise not copies of the Guild.

1619 Q. When was it that you first met with that? A. November, 1935.

Q. Do you have with you many orders from dealers containing that same stamp? A. Yes.

Q. Which would be illustrative of this? A. Yes, sir.

Mr. Haycraft: I ask this be marked Commission's Exhibit 306 for Identification.

(Copy of invoice from Gimbel Brothers, Pittsburgh, to Noxall W. P. Dress, 134 West 37th Street, New York City, was marked for identification "Commission's Exhibit 306.")

By Mr. Haycraft.

1620 Q. I show you Commission's Exhibit 306 for Identification, and ask you if this contains the warranty stamp you have in mind? A. Yes.

Mr. Haycraft: I offer it in evidence. This is an order from Gimbel Brothers, Pittsburgh, Pa., dated September 17, 1935.

Mr. Weisman: No objection.

Examiner Bennett: Received.

(The invoice referred to, heretofore marked for identification "Commission's Exhibit 306," was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Mr. Liebermann— A. Lieber.

Q. I beg your pardon. Mr. Lieber, how extensive was this requirement on the part of dealers in September, 1935, the requirement of putting this warranty on? A. Practically every customer that walked in that was a Guild—that joined the Guild—they would—has forced—that joined the Retail Guild or Association has forced us to accept the orders.

1622

In other words, they will not leave the orders unless they put the stamp on there.

Q. How many dealers made that requirement? A. I should safely say at least 50 per cent. of our buyers that walked into our showroom.

Q. Do you mean 50 per cent. of the buyers that walked in the showroom? A. Yes, sir.

Q. What percentage of your total sales would that be? A. Well, I should judge only—in fact, fully 50 per cent. of our business.

Q. Fully 50 per cent. of your business? A. No.

Q. Now, as a matter of practice, did you make any objection to receiving orders of that kind with that warranty on there? A. I did.

1623

Q. What was the nature of your objection? A. The nature of my objection was—

Mr. Weisman (interposing): I object to the statement as to the nature of the objection. Clearly it is an ex parte statement made at a time when we were not present and no opportunity to cross-examine on any such statement. I object to it.

We have in the record (the nature of his objection is not competent evidence at this time) the fact that he made the objection. Inasmuch as we have in the record the fact that he made the objection, obviously the nature of the objection itself is not competent evidence at this time. That is, in my opinion, an elementary rule of law.

Examiner Bennett: No. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

1625 Q. What was the nature of your objection? A. The nature of the objection was that I have absolutely nothing to do with the Guild, and that they cannot run my business in any shape, manner or form, that it has become a memorandum business, the moment we put that stamp on there, the moment I accept an order of that kind it has become a memorandum business, and I am not in business to run a memorandum business.

Q. What do you mean by "memorandum business"?

1626 Mr. Weisman: I object to "What do you mean by 'memorandum business'?" because he has already testified as to what he did, and the words are plain, ordinary English words, and this is simply piling incompetency upon incompetency now. We have him stating what somebody else said and now he is asking him a question as to what he meant when he said something when they said something to him. At none of these times was any representative of the respondents present and within hearing. It is incompetent, illegal, immaterial, irrelevant, and highly prejudicial from every standpoint conceivable.

Examiner Bennett: No, it is not. Overruled.

Mr. Weisman: Exception.

A. In other words, if we were to ship merchandise out with this stamp on it means that they have a perfect right to return the merchandise whenever they want to. Naturally, that will mean the ruination of my business if I sell merchandise on memorandum.

By Mr. Haycraft.

Q. Did you refuse to do business with these dealers, insisting on putting that stamp on their orders; in other words, did you refuse to do business with such dealers as insisted on putting this warranty stamp on their orders?

A. Well, for a short period I have refused. In the meantime it has been affecting my business. And after a short period I was forced to accept these orders because we lost receiving orders without the stamp, and I just took my chance on that. We could not get the orders unless the stamp was on there, and I just had to take my chance on that.

1628

Q. Well, as a matter of practice, did any of the dealers, your customers, return goods? A. Yes, they did.

Q. Because they were supposed to be copies of, or found to be copies of, or claimed to be copies of garments manufactured by manufacturers who were members of the Guild? A. Yes. We did.

Q. Was that in more than one instance? A. Yes, sir.

Q. How often would you say that that happened during the months, we will say, of October, November and December of 1935? A. It is very hard to tell—

1629

Mr. Weisman: I object.

A. —How often it happened.

Mr. Weisman: Oh.

By Mr. Haycraft.

Q. More than once? A. Yes.

1630

Q. What effect did that have upon your business? A. Well, it had an effect to this extent: We have refused to accept quite a number of these returns, for example, for the simple reason they have marked—

Mr. Weismah (interposing): I object "for the simple reason," to the witness giving the operation of his mind. It may be a simple reason or it may be a complex reason, it may be a correct reason, or it may be an illogical reason. The inquiry is as to whether he got returns.

Mr. Haycraft: The inquiry was what effect did it have on his business.

1631

Mr. Weisman: Now, he is giving the reasons.

Examiner Bennett: It goes to the answer of that question. I will hear his answer.

Mr. Weisman: Exception.

Examiner Bennett: Granted.

Proceed.

By Mr. Haycraft,

Q. State your answer. A. What is the question?

(Question read.)

A. I have forgotten my answer up to that point.

1632

Mr. Haycraft: Counsel interrupted the witness in the middle of his answer and I will ask that the answer so far as given be read.

(Answer read.)

A. For the simple reason that they have marked "return of this merchandise by the order of the Guild." In other words, the Guild has instructed them to return these merchandise, these goods.

Mr. Weisman: I ask that the latter part of his answer be stricken out as purely hearsay and without any support or foundation in fact.

Examiner Bennett: Well, it will be stricken until he shows knowledge of that situation.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. What effect did it have upon your business? Will you answer? A. We have refused to accept the returns on account of the Guild; that we have suffered; that we were not able to get any business from these accounts here owing to the fact that we have refused to accept these returns; that quite often I have cases whereby it can be proven; I have letters where people had reorders to me, and they have written me that they will not send me the reorders unless that I will accept the returns in my shop.

1634

Mr. Weisman: I ask that the latter part of his answer be stricken out. It is clearly apparent on the face of it that it is pure hearsay, speculation and a conclusion, and it is secondary evidence in addition thereto. Now, the witness is testifying about something that somebody wrote him, when it is perfectly apparent that the best evidence is not what this witness thinks is in this particular writing, but the writing itself is the best evidence of what it contains. I move that all of that part of his answer be stricken out.

1635

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. Can you recall any particular incident where such a thing happened? A. Well, here is a case right here, which is a case with R. H. White.

1636

Saul Lieber—For Commission—Direct.

Mr. Haycraft: I ask that these be marked for identification.

(Invoice from R. H. White Company, Boston, Mass., to Noxall Waist & Dress Company, New York City, was marked for identification "Commission's Exhibit 307.")

(Copy of letter from Noxall Waist & Dress Company, Inc., under date of November 1, 1935, to R. H. White Company, Boston, Mass., was marked for identification "Commission's Exhibit 308.")

1637

(Letter from L. Mandelson, R. H. White Company, Boston, Mass., under date of November 11, 1935, to Noxall Waist & Dress, New York City, was marked for identification "Commission's Exhibit 309.")

By Mr. Haycraft.

Q. I call your attention to Commission's Exhibit 307 for Identification, being a return from the R. H. White Company, dated October 19, 1935. I ask you if you can identify that as having been received by you? A. Yes.

Q. Did you ship the goods originally to R. H. White described in this document? A. Yes.

Q. Were the goods returned to you? A. Yes.

1638

Q. I show you Commission's Exhibit 308, and ask if this is a carbon copy of an original letter sent to you by R. H. White on November 1, 1935, with respect to the return, Exhibit 307 for Identification? A. Yes, sir.

Q. I hand you Commission's Exhibit 309 for Identification, and ask you if this is a letter, original letter, received by you from R. H. White Company, dated November 11, 1935, relating to this same transaction? A. Yes.

Mr. Haycraft: I offer these three in evidence.

Mr. Weisman: I object to the introduction of these letters in evidence.

Examiner Bennett: Overruled. They will be received in evidence.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Referring to Commission's Exhibit 309 for Identification, I notice that White & Company states, in part, as follows: "You will have to settle this matter with the Guild and accept the four dresses which you have refused to date, or we will be unable to send you any confirmation of the enclosed orders." Did you get in touch with the Guild? A. No, sir; I did not.

Q. Did you accept the return of the four dresses? A. 1640
The return was refused.

Q. Refused? A. Refused.

Q. Were you able to continue business with R. H. White & Company? A. No.

Q. On any other number? A. No. For a period after, for a period of time, for a few months, I have not done any business thereafter on account of refusing to accept that return.

Q. I show you Commission's Exhibit 310 for Identification, Commission's Exhibit 311 for Identification and Commission's Exhibit 312 for Identification. I ask you if you identify that return—I ask you to identify it first. A. Yes. Those are merchandise sent to us, slips were sent to us through the mail.

1641

Q. From Kaufmann's? A. Yes, sir.

Q. On October 5, 8, 12, 1935, did you receive the goods that were listed in these invoices? A. I refused to accept them. I received them, but I refused to accept them.

Q. The goods were sent back to you? A. Yes.

Q. You refused them? A. I refused to accept them.

Q. I show you Commission's Exhibit 313 for Identification, and ask you if you can identify that as an original

1642

Saul Lieber—For Commission—Direct.

letter from Kaufmann's, dated October 5, 1935, and referring to the same garments referred to in Commission's Exhibits 310, 311 and 312 for Identification? A. Yes.

Q. Did you receive that original letter? A. Yes.

Q. I show you Commission's Exhibit 314 for Identification. A. Yes.

Q. Which purports to be a carbon copy of a letter from yourself to Kaufmann's, dated October 14, 1935, and ask you if you sent the original of that letter to Kaufmann's on October 14, 1935, and whether the transaction therein is one that relates to the same transaction as Commission's Exhibits 310, 311, 312 and 313 for Identification? A. Yes.

1643

Q. Did you send the original of that letter to them? A. Yes.

Q. I show you Commission's Exhibit 315, purporting to be an original letter from Kaufmann's to Bernard Sands, dated October 15, 1935, and ask you if you received that original letter? A. Yes.

(Letter from John C. Flynn, Kaufmann's, Fifth Avenue, Pittsburgh, under date of October 15, 1935, to Bernard Sands, Noxall Waist & Dress Company, New York City, was marked for identification "Commission's Exhibit 315.")

Q. Does that relate to the same subject-matter? A. Yes.

1644

Mr. Haycraft: I offer these documents in evidence.

Mr. Weisman: Let me see them.

Mr. Haycraft: Yes. While you are looking at them I ask that these documents be marked "Commission's Exhibits 316 and 317" for identification.

(Letter from Joseph Horne Company, Pittsburgh, Pa., under date of October 4, 1935, to Noxall Waist & Dress Company, 134 West Thirty-seventh Street, New York City, was marked for identification "Commission's Exhibit 316.")

(Copy of letter from Noxall Waist & Dress Company, Inc., under date of October 5, 1935, to Joseph Horne Company, Pittsburgh, Pa., was marked for identification "Commission's Exhibit 317.")

Mr. Weisman: As to Commission's Exhibit 340, I make the same objection as I made to Commission's Exhibit 307, for the purposes of brevity, instead of repeating it. I suppose the Court will rule the same way.

Examiner Bennett: Objection overruled.

Mr. Weisman: Exception.

(The document referred to, heretofore marked for identification "Commission's Exhibit 310," was marked as an exhibit and received in evidence.)

1646

Mr. Weisman: As to Commission's Exhibit 313 and Commission's Exhibit 315 for Identification, I make the same objection as I made to Commission's Exhibit 309.

Examiner Bennett: Overruled.

Mr. Weisman: Except.

Examiner Bennett: Noted.

(The documents referred to, heretofore marked for identification "Commission's Exhibits 313 and 315," were marked as exhibits and received in evidence.)

Mr. Weisman: As to Commission's Exhibit 314 for Identification, I make the same objection as I made to Commission's Exhibit 308.

1647

Examiner Bennett: Overruled.

Mr. Weisman: I except.

Examiner Bennett: Noted.

(The document referred to, heretofore marked for identification "Commission's Exhibit 314," was marked as an exhibit and received in evidence.)

1648

Saul Lieber—For Commission—Direct.

Mr. Weisman: I make the same objection to Commission's Exhibits 311 and 312 as I did to Commission's Exhibit 310.

Examiner Bennett: Overruled.

Mr. Weisman: I except.

(The documents referred to, heretofore marked for identification "Commission's Exhibits 311 and 312," were marked as exhibits and received in evidence.)

By Mr. Haycraft.

1649

Q. I show you Exhibit—

Examiner Bennett: One moment.

By Examiner Bennett.

Q. Was that transaction in the ordinary course of business with them? A. Yes, sir.

Mr. Weisman: In view of your Honor's question to the witness prior to the admission of those in evidence, that they were received in the usual course of business, I assume that your Honor is admitting them because they were received in the usual course of business; and that they be limited for—

Examiner Bennett: Do not assume that I am doing anything that I do not state, Mr. Weisman.

1650

Mr. Weisman: Then I will ask, if your Honor please, that they be admitted for that limited purpose that I will now describe, because I assume that your Honor is admitting them because they were received in the usual course of business, and I therefore ask that they be admitted for the limited purpose of showing that in the usual course of his business he received them.

Examiner Bennett: They are received for all purposes. There is no need in making those technical objections to this sort of thing.

You object to verbal statements and then you object to the documents when they come in. It is very proper for you to make your objection, but it is no use to make that sort of an objection.

Mr. Weisman: I am sorry I have to disagree with your Honor. We have to think of a future tribunal, too.

Examiner Bennett: I overrule it.

Mr. Weisman: My objection goes to the contents of this ex parte document or statement.

1652

Examiner Bennett: They are not ex parte statements, a fact I am quite sure you are aware of, Mr. Weisman.

Mr. Weisman: We did not make them.

Examiner Bennett: They are statements in the ordinary course of business and are regarded as true statements prima facie.

Mr. Weisman: I must respectfully differ with the Court.

Examiner Bennett: That is the way we do business, and the only way or basis upon which we can do business.

Mr. Haycraft: I am waiting for Mr. Weisman to sit down. He said he was not through until he sat down.

1653

Mr. Weisman: All right. He has invited me to sit down.

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q: I show you Commission's Exhibit 316 for Identification, and ask you if you can identify that as an original

1654

Saul Lieber—For Commission—Direct.

letter received by you in the ordinary course of business from the Joseph Horne Company, dated October 4, 1935.

A. Yes:

Mr. Weisman: Are you going to—are you not making a mistake, Mr. Haycraft?

Mr. Haycraft: I think not.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Haycraft.

1655

Q. I show you Commission's Exhibit 317, purporting to be a carbon copy of a letter from yourself to Joseph Horne Company, dated October 5, 1935, and ask you if you can identify that as a carbon copy of an original sent by you to Joseph Horne Company in the ordinary course of business in reply to Commission's Exhibit 316 for Identification? A. Yes, sir.

Mr. Haycraft: I offer these two exhibits in evidence, namely, Commission's Exhibit 316 for Identification and 317 for Identification.

Mr. Weisman: May I see them?

Mr. Haycraft: Yes. While you are looking at them these three documents marked "Commission's Exhibits 318, 319 and 320" for Identification.

1656

(Purchase return record from Luries, Baltimore, Md., October 9, 1935, to Noxall Dress, New York City, was marked for identification "Commission's Exhibit 318.")

(Letter from Luries, Baltimore, Md., under date of October 9, 1935, to Noxall Dress, 134 West Thirty-seventh Street, New York City, was marked for identification "Commission's Exhibit 319.")

(Copy of letter from Noxall Waist & Dress Company, Inc., under date of October 14, 1935, to Luries, 17 West Lexington Street, Baltimore, Md., was marked for identification "Commission's Exhibit 320.")

Mr. Weisman: May I have the same objection? I assume there will be the same ruling.

Examiner Bennett: Let me see the documents. There may be something in them that might change the situation.

(The Examiner examines the documents.)

Examiner Bennett: The objection is overruled. They will be received in evidence.

1658

Mr. Weisman: Exception.

(The letters referred to, heretofore marked for identification "Commission's Exhibits 316 and 317," were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 318 and ask you if you can identify that as the return slip of Luries, Baltimore, Md., dated October 9, 1935? A. Yes, sir.

Q. Did you receive that in your ordinary course of business? A. Yes, sir.

Q. Did you receive the goods described therein? A. Yes, sir.

1659

Q. I show you Commission's Exhibit 319, and ask you if you received that original letter from Luries, dated October 9, 1935? A. Yes, sir.

Q. And that refers to the same subject-matter as Commission's Exhibit 318? A. Yes, sir.

Q. I show you Commission's Exhibit 320, carbon copy of a letter from yourself to Luries, dated October 14, 1935, and ask you if you identify that as a carbon copy of an

1660

Saul Lieber—For Commission—Direct.

original letter sent by you to Luries in the ordinary course of business in reply to the Luries' letter of October 9, 1935? A: Yes, sir.

Q. Commission's Exhibit 319 for Identification? Yes, sir.

Mr. Haycraft: I offer these papers in evidence.

Mr. Weisman: To Commission's Exhibit 318 I make the same objection as I did to Commission's Exhibit 307, and as to Commission's Exhibit 319, I wish to make the same objection as to Commission's Exhibit 309, and as to Commission's Exhibit 320, I make the same objection as to Commission's Exhibit 308.

1661

Examiner Bennett: Received in evidence.

Mr. Weisman: Exception.

(The documents referred to, heretofore marked for identification "Commission's Exhibits 318, 319 and 320," were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 321 for Identification, and ask you if you identify that as a return slip from Schunemans & Mannheimers, received by you in the ordinary course of business? A. Yes, sir.

1662

Q. Did you receive the dresses described therein? A. No, sir; we have received them, but we have refused them.

Q. You received them from them? A. Received—I mean, they were presented for delivery, but we have refused to accept them.

Q. Did they return those dresses to your office? A. Yes, sir.

Q. I show you Commission's Exhibit 322, and ask you if you identify that as a carbon copy of a letter from yourself to Schunemans & Mannheimers, dated February 13,

1936, with respect to the return of the goods described in Commission's Exhibit 321 for Identification? A. Yes, sir.

Q. Did you send the original of that letter in the ordinary course of business? A. Yes, sir.

Examiner Bennett: Just two papers, is that it?

Mr. Haycraft: I have not yet offered them. I just asked Mr. Weisman to look at them while I am describing the others if he wishes.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. I ask you if you identify Commission's Exhibit 323 as a notice from the Express Company that these garments had been received in New York that are described in Commission's Exhibit 321 for Identification? A. Yes, sir. 1664

Mr. Weisman: Is this all about the same?

Mr. Haycraft: Yes.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 324, and ask you if you received that original letter dated March 16, 1936, from Schunemans & Mannheimers? A. Yes, sir.

Q. And does it relate to the same subject-matter? A. Yes, sir.

Q. I show you Commission's Exhibit 325 for Identification, and ask you if you identify that as a carbon copy of an original letter sent by you to Schunemans & Mannheimers, under date of March 18, 1936, in reply to their letter of March 16, 1936, for identification? A. Yes, sir. 1665

Q. I show you Commission's Exhibit 326 for Identification, and ask you if you identify that as an original letter received by you from Schunemans and Mannheimers, dated April 11, 1936, relating to the same subject-matter? A. Yes, sir.

1666

Saul Lieber—For Commission—Direct.

Q. I show you Commission's Exhibit 327, apparently a carbon copy of an original letter dated April 14, 1936, addressed to the Railway Express Agency, and ask you if you identify that as a carbon copy of the original letter sent to the Railway Express Agency, and whether it refers to the subject-matter of the garments heretofore described?

A. Yes, sir; it is the same.

Q. I show you Commission's Exhibit 328 for Identification, and ask you if you identify that letter as a carbon copy of an original letter sent by you to Schunemans & Mannheimers, under date of April 14, 1936? A. Yes, sir.

Q. Does it relate to the same subject-matter? A. Yes, sir.

1667

Q. I show you Commission's Exhibit No. 329 for Identification, and ask you if you identify that as a carbon copy of an original letter sent by your organization to Mr. Dieckhaus, care of Schunemans & Mannheimers? A. Yes, sir.

Q. Under date of April 21, 1936? A. Yes.

Q. Does this relate to the same subject-matter? A. Same matter.

Q. I show you Commission's Exhibit 330 for Identification, and ask you if you identify that as a carbon copy of an original letter sent by you to Mr. Dieckhaus, under date of April 28, 1936? A. Yes.

Q. Does that relate to the same subject-matter? A. Same subject-matter; yes, sir.

1668

Examiner Bennett: Do they all relate to the same transaction?

Mr. Haycraft: Yes, sir.

I offer this correspondence in evidence (referring to Commission's Exhibits 321 to 330 for Identification).

Mr. Weisman: May I have, instead of going through this—

Examiner Bennett: Pardon?

Mr. Weisman: Judge, do I have to go through all of this and repeat those objections? It takes so long. In the interest—

Examiner Bennett: If you do not wish to make the objections in detail.

Mr. Weisman: I say, would you rather permit me to make them in less detail?

Examiner Bennett: Yes.

Mr. Weisman: And say that I offer the same objections as to the others?

Examiner Bennett: Surely.

Mr. Weisman: Otherwise, the trial will be prolonged unnecessarily. 1670

Examiner Bennett: You may do so.

Mr. Weisman: Then, with leave of Court, I urge the same objections to these exhibits as I have heretofore made, with the particular explanations and exceptions as to the other letters as may be particularly applicable thereto.

Examiner Bennett: Yes.

Mr. Weisman: Otherwise it will take too long.

Examiner Bennett: Yes, I will make the same ruling, and they may be received.

Mr. Weisman: Exception.

(The documents referred to, heretofore marked for identification Commission's Exhibits 321, 322, 323, 324, 325, 326, 327, 328, 329 and 330, were marked as exhibits and received in evidence.) 1671

Examiner Bennett: I want to call attention to what appears to be an error on the record; at page 609 there is an exhibit referred to as Exhibit 640.

Mr. Haycraft: That evidently is a reference to a page number from a record of the exhibits in the hands of the respondents.

1672

Saul Lieber—For Commission—Direct.

(There was a short recess taken.)

Examiner Bennett: We will come to order.
You may resume, Mr. Haycraft.

By Mr. Haycraft.

Q. Mr. Lieber, with respect to Commission's Exhibits 310 to 315, the transaction with Kaufmann's in October, 1935, described in that correspondence, I will ask you whether or not you continued to do business with Kaufmann's after October, 1935? A. No, I didn't do any business until May of 1936.

1673 Q. Do you know the reason why? A. Well, usually, when we refuse to take merchandise back, there is always a bad taste in the buyer's mouth, or so, and things of that sort, and then they stop coming up.

Mr. Weisman: I object to that and ask the answer be stricken out.

Examiner Bennett: Well, it may be stricken, but I wish you would put it in a little different form.

Mr. Haycraft: Read the question.

(Last question read.)

By Mr. Haycraft.

Q. That can be answered "yes" or "no." A. I would say yes.

1674 Q. What was the reason? A. The reason is——

Mr. Weisman: Wait a moment. May I examine your dire for a moment on this question? Does he know?

Mr. Haycraft: I do not think so, Mr. Examiner.

Examiner Bennett: Well——

Mr. Haycraft: He can do that on his cross-examination. I do not think he should interrupt the direct examination.

Examiner Bennett: I think that in a technical showing as to first-hand knowledge probably your voir dire will show that he had not that first-hand knowledge, but he has judgment as a business man as to why certain things happened, and that is all we may expect to get from him.

Mr. Weisman: I submit if I get that that it nullifies the rest of his testimony which is now about to be tendered.

Mr. Haycraft: Oh, no.

Mr. Weisman: I mean, he may have a guess and that is all this can be.

Examiner Bennett: All right, I will let him give his reason, if he has any.

1676

A. In the course of business we usually find when we have disputes of returns of merchandise, we find in most of the times that the buyer stops coming up because we refused to take merchandise back.

Examiner Bennett: Was that the fact in this case?

The Witness: Well——

Examiner Bennett: Did the buyer cease coming into your shop?

The Witness: Well, the buyer did not show up. We have not seen the buyer and we have been after the buyer right along to get business. Our men have been on the road and trying to get business. We were not able to get any business from these people.

1677

Examiner Bennett: I see. You did get business before that?

The Witness: Yes, we did.

1678

*Saul Lieber—For Commission—Direct.**By Mr. Haycraft.*

Q. Now, referring to the Joseph Horne incident in October, 1935, as set out in Commission's Exhibits 316 and 317, have you continued to do business with Joseph Horne Company since October 5, 1935? A. We did not.

Q. For how long a period? A. We have not sold them 5 cents worth of goods since that time, while up to that time we were doing from four to five hundred dollars a month business right along. Since that time there, we had a dispute on account of this return; we got no business from the concern at all.

Q. Have you made attempts to get business from them?

1679 A. Oh, yes; yes, sir.

Q. Now, referring to the Schunemans & Mannheimers situation, where I observe in this correspondence that you made a five-dollar cash settlement. A. Since February 10 when we have refused this merchandise, why, this was all in dispute and we were unable—because the matter was settled some time in April, if I am not mistaken, where we had to give the account allowance of \$5 on a dress, because we have refused to accept the merchandise, in order to retain the good will of the buyer, so we had allowed them \$5—a dollar on each dress, allowance, and he took the merchandise in. We have not done any business as yet since February 10—since February 10 we have done no business with the concern.

1680 Q. Now, these instances that I have called your attention to, and which are contained in these exhibits, are they the only instances where you have had returns? A. No, sir; we have had others, too.

Q. I think you better wait until—all right. Now, in this question I just asked you, I refer, of course, on account of the warranty stamp, and on account of the Guild requirements. What is your answer, with that amendment to that question? Have you had other instances? A. We had. We had other disputes.

Q. Is it possible from the way in which you conduct your business, to determine the exact extent of the effect upon your business as a result of the refusal of returns on the part of customers, due to the Guild requirements?

A. It is very hard.

Q. Why is that so? A. Why, after all, in a large business with so many customers, it is pretty hard to state whatever amount is hurt to my business, to what extent, to what rate, extent.

Mr. Haycraft: That is all, Mr. Examiner.

Mr. Martin: Wait just a moment.

Mr. Weisman: There seems to be a difference of opinion between counsel.

1682

Examiner Bennett: All right.

Mr. Haycraft: I will ask one or two more questions.

By Mr. Haycraft.

Q. Have you made any calculation as to the percentage of the returns that you have had similar to those you have referred to in your testimony and described in your exhibits, to the total number of returns?

Mr. Weisman: May I have that question?

(Last question read.)

By Mr. Haycraft.

1683

Q. Or to the total volume of sales?

Mr. Weisman: Well, now, which is it?

Mr. Haycraft: Either way. I don't know. Let us find out.

A. I did not go into that.

1684

*Saul Lieber—For Commission—Direct—Cross.**By Mr. Haycraft.*

Q. You have made no such calculation? A. I have made no such calculations.

Mr. Haycraft: All right. That is all.

Cross-examination by Mr. Weisman.

Q. Mr. Lieber, what volume of business did you do in the year 1935? A. Over a million dollars.

Q. So was all this merchandise sold at \$4.75? A. Yes, sir.

1685

Q. Well, didn't you sell some at lesser prices? A. I did not.

Mr. Haycraft: I object to the question as irrelevant and immaterial.

Mr. Weisman: Oh, it is very material.

Examiner Bennett: I understand that he so testified.

By Mr. Weisman.

Q. You are absolutely certain of that? A. Yes, sir.

Mr. Haycraft: May I have a motion to strike the question and answer, the last two, Mr. Examiner? To keep the record straight, on the ground it is irrelevant and immaterial.

1686

Mr. Weisman: I submit it is very material, because—

Examiner Bennett: I am going to let it stand.

By Mr. Weisman.

Q. I understood you to say, in answer to my last question, that you sold all your merchandise at \$4.75? A. Yes, sir.

Q. That you sold none at less than that? A. With the exception of jobs.

Q. Well, when you— A. But the regular form of selling regular merchandise, that is the only price we sold at.

Q. Didn't you say before that you sold all of your merchandise at that price? A. I refer to our regular daily business, regular merchandise at \$4.75.

Q. You do not.— A. (Interposing) You know, in the dress business, we always got some jobs, or some that were ill, undesirable merchandise, but I am talking of the regular course, of the \$4.75 line, we are talking about.

Q. Did these Commission's Exhibits 310 to 330 refer to regular merchandise or jobs? A. With the exception of the sale in there, that was sold as our merchandise, and have the order here to prove it.

1688

Q. Is that the Commission's Exhibit 318, showing a sale price of these particular items at considerably less than \$4.75? A. Yes, sir. They do.

Q. So that your answer before was not entirely correct, is it? A. It was correct because usually we refer to the regular merchandise. It is not referred to—this is not the regular every-day sale.

Q. Now—

Mr. Haycraft: Mr. Examiner, may I enter an objection again to this line of testimony as not proper cross-examination, not relevant or material to the issues in this case?

1689

Examiner Bennett: Sustained; I do not think there is an issue in the case on that.

Mr. Haycraft: I move to strike the last question and answer.

Examiner Bennett: As I understood it, I do not gather from the pleadings that you have any issue as to discrimination under the Clayton Act.

1690

Saul Lieber—For Commission—Cross.

Mr. Weisman: Well, I think that our fair trade practices are in question, but, aside from that, the purpose of this is to establish a basis of the number of units that he sold during the year.

Examiner Bennett: Yes. Well, he can probably establish that from direct testimony, if that is of any consequence.

Mr. Weisman: Well, I submit upon my theory of this case it is of great consequence to show the number of units that this man sold a year.

Examiner Bennett: All right, but this matter can be shown without going into this matter of discriminations, if there is any such thing.

1691

By Mr. Weisman.

Q. What volume of your business would you say, in percentages, is done at unit prices of less than \$4.75 per dress?

Mr. Haycraft: Same objection, Mr. Examiner.

Mr. Weisman: The Examiner said for this purpose I might go on.

Mr. Haycraft: I did not so understand you, Mr. Examiner. As I understood you to say, in this case—if they must put in a defense on that, all right, let him go into that. It is not proper cross-examination. This witness said he did not make any calculation as to the percentages—

1692

Mr. Weisman: He did not say anything—

Mr. Haycraft: —it was impossible for him to do it.

Mr. Weisman: He did not say anything of that kind. I am asking him as to what percentage of his business was done at a price less than \$4.75.

Examiner Bennett: I will sustain the objection to going into price discrimination, if that is what you are trying to do.

Mr. Weisman: That is not what I am trying to do.

Examiner Bennett: I see.

Mr. Weisman: I am trying to get a basis for the units of sales.

Mr. Haycraft: I am objecting to that as not proper cross-examination.

Examiner Bennett: Ask him about units of sale; not about——

Mr. Weisman: What is that?

Examiner Bennett: I say, ask him about units of sale. Why are you going all the way around?

By Mr. Weisman.

1694

Q. What was the total volume of your business in 1935?

Mr. Haycraft: I object.

A. Over a million dollars.

Q. Well, how much over a million? That might be ten million, that might be two million, that might be \$1,500,000. Is that the best answer you can give us?

Mr. Haycraft: Mr. Examiner, I object to the further interrogation along this line. You must realize that this witness——

Mr. Weisman: He is president of this company in active charge of its operations, and knows all about it.

1695

Mr. Haycraft: May I continue my objection, without being interrupted by counsel for the respondent? He asked a while ago that courtesy of me. I think he should consider it as to himself.

Examiner Bennett: I think we should keep that rule religiously.

Mr. Haycraft: Your Honor, this witness is in an industry—naturally, these competitors would like

1696

Saul Lieber—For Commission—Cross.

to know exactly how much business he is doing. I do not think he should be required to divulge that.

Examiner Bennett: I will not press the witness on anything like that. I think if his statement gives a general idea of the size of the business, why, it is sufficient.

By Mr. Weisman.

Q. Would you say that you do more than two million?

Mr. Haycraft: Same objection, your Honor.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

1697

By Mr. Weisman.

Q. Would you say you do more than a million, five hundred thousand dollars?

Mr. Haycraft: Same objection, Mr. Examiner.

Examiner Bennett: The same ruling.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Would you say you do more than a million, two hundred and fifty thousand dollars?

Mr. Haycraft: I object to this line of examination, Mr. Examiner.

1698

Examiner Bennett: Sustained.

Mr. Haycraft: I ask that counsel be instructed not to follow it any more.

Mr. Weisman: I am making a record in this case.

Examiner Bennett: As I understand it, he made the statement that his business was over a million dollars.

Mr. Weisman: Of course; that might be ten million.

Examiner Bennett: Well, it might not. It does not mean any such thing in the English language.

Mr. Weisman: It might mean a million; seven hundred and fifty thousand, which would materially—

Examiner Bennett: No, it is supposed to be approximate.

By Mr. Weisman.

Q. When you said that you did over a million, did you mean slightly over a million or a large amount over a million? 1700

Mr. Haycraft: Mr. Examiner, I ask that the witness be instructed not to answer these questions, and that counsel be instructed not to ask them.

Examiner Bennett: Yes—

Mr. Haycraft: And that the objection be sustained.

Examiner Bennett: I will sustain the objection to that—

Mr. Weisman: Exception.

Examiner Bennett: —to that cross-examination.

By Mr. Weisman.

Q. During the year 1935 can you give us an estimate of the number of units that were sold by the Noxall Waist & Dress Company—is that the name of your concern? A. Noxall. I have never gone into the facts to find out the amount of garments that we sold during that year. 1701

By Mr. Weisman.

Q. What is your best guess, as the head of this business? A. I would judge around 250,000 dresses.

1702

Saul Lieber—For Commission—Cross.

Q. How many customers would you say that you had on your account—books of account, from the time you commenced business down to date?

Mr. Haycraft: Objected to as not proper cross-examination unless restricted to the period of time covered on direct examination.

Mr. Weisman: I will amend the question to cover that period—no, I will not amend the question to cover that period—I urge the question. I think it is perfectly proper.

Examiner Bennett: You may answer.

1703

A. Well, that question is very hard to answer. There may be, during that period, there may be 10,000 different accounts. It is a matter of twenty-two years.

By Mr. Weisman.

Q. During the year 1935 how many accounts would you say that you had actively on your books? A. I should judge at least about 3,000.

Q. How many active accounts would you say you had on your books during the year 1936? A. Same percentage as we had—same amount practically that we had during the year 1935.

1704

Q. In the early part of—in the first six months of 1935, what is your best guess or approximation as to the volume of business done by your concern?

Mr. Haycraft: I object as not proper cross-examination, incompetent, immaterial and irrelevant to any purposes in this case.

Examiner Bennett: Well, you have gone into the loss of business. I presume you certainly have the right to make comparisons. I will overrule your objection and let him give his best judgment as to what that was.

A. I should judge about two-thirds of the business, any way; two-thirds of the business done the first six months.

By Mr. Weisman.

Q. And you did approximately \$750,000, then? A. I am making no statement of amount. I would just say about two-thirds of the business.

Q. If you did during the year slightly in excess of a million dollars, did you not then—two-thirds of that would be about \$660,000, roughly speaking, and without any desire to pin you down to exact figures, or to have you divulge any information that might be of advantage to your competitors, as Mr. Haycraft claims—

1706

Examiner Bennett: I cannot get away, logically, from the fact that that general statement, as to losses can stand only unless it is inquired into or the permission given therefor.

Mr. Haycraft: I shall stand upon the testimony of the witness.

Examiner Bennett: Objection overruled.

Mr. Weisman, will you proceed?

By Mr. Weisman.

Q. Now, Mr. Lieber, can you give us your best opinion as to the volume of business as to the first six months of 1935, your business? A. Well, I believe about two-thirds of the total of the year 1935.

1707

Q. What, in your opinion, would that total be? A. It would be about \$600,000 or \$650,000 and around those figures.

Q. Yes. Now, the early part of 1935, was that a good year or a bad year in the dress business as it was generally understood? A. It was a pretty good year.

Q. Sales were rather high, were they? A. No different from any other year—no different from the year 1934.

1708

Saul Lieber—For Commission—Cross.

Q. Do you mean that the dress business always had good years? A. I am talking about my own business at the present time.

Q. I asked you whether you would say whether the year 1935 was a good or a bad year as far as business was concerned? A. A year—

Q. Let me finish my question. Will you answer the question? Can you tell me whether that was a good year for you? A. Yes.

Q. The volume of sales were generally bad; is that so? A. No, no. It was pretty good.

1709

Q. I just wanted to see if you were certain of it. A. I am.

Q. The volume of business—in other words, the volume of sales were generally up; is that correct? A. Yes, sir.

Q. We had begun to enjoy to some extent the recovery from the depression? A. Yes, sir.

Q. Do you remember whether or not subsequently in 1935 business continued to get better and better, or whether there was in the dress business a general recession from the advance that had been made in the early part of the year? A. There had been no recession in my priced merchandise.

Q. In other words, business has— A. (Interposing) Continued in my priced merchandise.

Q. Has continued at all times equally? A. Yes, sir.

1710

Q. Good? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. In 1936 what is your best estimate based on your twenty-eight years of experience in your business, and your general knowledge as to the volume of business that you will probably do this year? A. It is pretty hard to tell you at the present time, for the simple reason that, for instance, you take the early part of the spring we had quite a disturbance as far as labor is concerned that af-

affected business a great deal during the months of January and February; that is practically a total loss to the members of the industry in general, therefore it is pretty hard to judge at the present time.

Q. But you did not have—there was a rather serious strike in the dress business, or the dress industry, in the early part of the year 1936, was there? A. There was no strike.

Q. It was a stoppage? A. No, it was simply a disturbance on account of the new agreement.

Q. The readjustment of prices with the union and the contractors? A. Yes, sir.

Q. And the limitation of contractors? A. Well, whatever the new labor agreement that we had to go into.

Q. As a result of these upheavals in the dress industry in the early part of 1936 the dress industry was very adversely affected from the standpoint of the manufacturer; is that a fact? A. Yes, sir.

Q. Unusual and extraordinary losses or recessions from previous years were sustained by the manufacturers generally throughout the trade; is that a fact? A. Well, in—not too general. It has to be individual. Everybody suffered in general, of course.

Q. You knew it was? A. In general, in general, in general; in general naturally we all did in that period.

Q. Yes. A. We were afraid to put our merchandise into operation.

Q. If you did not put merchandise into operation you did not have any merchandise to sell? A. No.

Q. If you had no merchandise to sell you had to continue, notwithstanding, with the same general overhead? A. Right.

Q. Right? A. Right.

Q. You had the same employees and you had the same rent and you had the same bookkeepers and so forth and

1714

Saul Lieber—For Commission—Cross.

so forth? A. Well, that was an unusual season. That was an unusual occasion.

Q. Through that unusual occasion there was a serious setback to the manufacturers generally, and to yourself in particular? A. Yes.

Mr. Haycraft: I move to strike out all of this latter testimony as incompetent, immaterial, irrelevant, and having nothing to do with the issue involved here whatsoever.

Examiner Bennett: Denied.

By Mr. Weisman.

1715

Q. Now, that matter with the union was adjusted some time in the early part of March, was it? A. I think it was the early—no, I think it was the latter part of February.

Q. What? A. I think it was the latter part of February.

Q. Through the latter part of February or the early part of March? A. Yes.

Q. But in any event it did do serious injury to your general business for two months of this year? A. I would not say two months.

Q. January and February? A. The agreement expired February 1, since it was not signed as yet, so I would not say it affected anybody except in the latter part of February. It affected us only for the month of February.

1716

Q. For the month of February? A. Yes.

Q. Since then you have concluded your arrangements with the union, have you? A. Yes.

Q. Yes? A. Yes.

Q. Your business is moving smoothly now? A. Yes.

Q. Is your business still good? A. What?

Q. Is your business still good? A. Yes.

Q. It is? A. O.K. now.

Q. It is good at the present time? A. Yes.

Q. Is business with you generally better now than it was in 1935? A. My business is just as good now as it was in the spring of 1935. We had no disturbances of labor then or anything until as far as—let me get this straight—you mean in '35.

Q. Yes. A. Well, I was right. My business is just as good now as it was in the spring of 1935 now. We had no disturbances of labor then or anything at all as far as labor or Guilds or anything of that sort was concerned, therefore, our business continued the same as it did before.

Q. As it did before? A. Yes.

Q. And you are going along rather smoothly and pleasantly? A. Yes.

Q. Now? A. Now.

Q. And you are making money? A. If we do business we make money.

Q. That is right? A. That is right.

Q. I show you Commission's Exhibit No. 306— A. Yes.

Q. —I will ask you to read that stamp. A. Well.

Q. Can you read it? A. Yes, sir.

Q. Was that on the order when you took it? A. At the time when we took this order it was there.

Q. It was not? A. It was.

Q. It was? A. It was.

Q. That is what I wanted to know. A. You are getting the information. It was.

Q. Then I will read this just once.

1719

Mr. Weisman: If your Honor please, I will read it just once to this witness, if that will meet with your approval.

Examiner Bennett: That will be all right.

By Mr. Weisman.

Q. "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by

1720

Saul Lieber—For Commission—Cross.

members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted." Do you know what the word "warranted" means? A. Yes.

Q. What does it mean? A. It means that if they find the merchandise in their stock to be merchandise that is in any way a copy of the Guild, that it is to be turned back to us.

Q. Did you not understand by the acceptance of this order that you, in effect, promised the purchaser that none of the merchandise recited on here was copies of styles originated by the Fashion Originators Guild of America, Inc.? A. Will you read that question again?

1721

(Question read.)

A. Well, we were——

Q. No. Do you not understand that that was your promise? A. That that was a promise?

Q. That you made? A. Yes.

Q. You did? Let us get this clear. A. Yes, I did.

Q. Did you not further understand by the second sentence thereof, to wit: "That the purchaser reserves the right to return any merchandise which is not as warranted," that the purchaser was putting you on notice that if any of the merchandise or goods was not as warranted he had the right to return it? A. Yes, but I was

1722

faking a chance——
Q. No; but did you not understand that by those words?

A. Yes, I did. As far as reading is concerned, yes.

Q. Your answer is "yes"? A. Yes, as far as reading is concerned, yes.

Q. There was no doubt about your understanding of the meaning of the terms of this—the meaning of those words? A. Yes, sir.

Q. You understand English? A. Yes, sir.

Q. You do? A. I do, sure.

Q. You knew when you accepted this order that this was right there; that it was thereon; that there was no question about that? A. Yes, it was on there.

Q. It was on there? A. Yes.

Q. There was no artifice? You were not fooled about this? This was not put on there after the order was given to you? Was it? Or was it not? A. No, sir.

Mr. Haycraft: Which one of those questions is the witness answering?

Mr. Weisman: All of them.

By Mr. Weisman.

1724

Q. In other words, Gimbel Brothers being the purchasers referred to in this order before they placed that order with you, let you know that they were only willing to place it with you upon those terms; is that not correct? A. It is correct.

Q. Now— A. Or otherwise I could not get their business. If I could not accept it that way I could not get their business.

Q. From whom was this order received? A. From Gimbel Brothers.

Q. Gimbel Brothers? A. Pittsburgh.

Q. Pennsylvania? A. Yes.

Q. Who was the buyer representing Gimbel Brothers, Pittsburgh, Pa.? A. Miss Lucy.

1725

Q. Miss Lucy? A. Miss Lucy.

Q. Where did you receive that order from her? A. This order was by mail.

Q. Was this a reorder? A. No, sir. This was an order placed in our showroom, and then it was—the firm mailed a consummation to us of it.

Q. And did you get the order in your showroom? A. Yes, sir; we did.

1726

Saul Lieber—For Commission—Cross.

Q. Did Miss Lucy of Gimbel Brothers at any time tell you that you could disregard this stamp? A. No.

Mr. Haycraft: I object as not proper cross-examination.

Mr. Weisman: I withdraw it. You are quite right.

Mr. Haycraft: It is 12.30, Mr. Examiner.

Mr. Weisman: My friend, Mr. Haycraft, has indicated to the Court that it is 12.30, and as a matter of fact, according to my watch it is 12.40, and I think that this is as good a time as any to stop. I am just starting in with this long list of witnesses to go over each one of them, and it will take some time to do so.

1727

Examiner Bennett: We will take a recess until 2 P. M. I will ask you to be here promptly so we will start at 2 and not at 2.15.

(Whereupon at 12.30 o'clock P. M. a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: You may resume, Mr. Weisman.

1728

Mr. Weisman: Will you please read the last question?

(Last question and answer read.)

By Mr. Weisman:

Q. Mr. Lieber, in your business, is it a common thing for a purchaser to sometimes stay away from your business for a season and experiment with garments from another house of the same type and price range? A. That is unusual.

Q. Have you not seen it happen? A. Very seldom.

Q. Have you seen customers stay away because they believed you were not fulfilling the terms of their orders, that they could not do business with you on the basis of the orders that they gave you? A. No, sir; I always delivered my orders very promptly at all times, and we are pretty well known for that.

Q. I did not ask you whether you delivered them promptly, or whether there was a lack of promptness, but suppose you promised to give a merchant, or a purchaser, one type of garment, and you gave him another type in fulfillment of the order; do you not think that they would be inclined to stay away from you?

1730

Mr. Haycraft: I object, no foundation—

A. We never—

Mr. Haycraft: —in fact, it is not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Would your Honor request my friend that if he wants to shout, that he should sit back a little farther. He nearly burst my ear drum that particular time.

Examiner Bennett: Well, you rather assumed in framing that question that this man had shipped goods different from those which were ordered.

1731

Mr. Weisman: No, I had not.

Examiner Bennett: And there is nothing in the testimony to show anything of that sort.

Mr. Weisman: May I ask—

Examiner Bennett: I am merely going by the implication of the question.

Mr. Weisman: Well, then—

1732

*Saul Lieber—For Commission—Cross.**By Mr. Weisman.*

Q. I now ask you, without any implication that you had ever done such a thing being intended by the form or substance of the question, whether or not it is your opinion from the long experience that you have had in this business that if you made an agreement with a customer to give him one type of merchandise, and then shipped him another, whether in your opinion that would not be an inducing cause to have that merchant stay away from you the successive season, or thereafter?

Mr. Haycraft: Same objection.

1733

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: It is irrelevant.

Mr. Weisman: Well, I wish to say to the Court very briefly that in view of the Court's ruling that he can only give as his opinion the reason that these people stayed away from him, I wish to show that there may have been other reasons, certainly in view of the fact that he did not comply with these orders in his shipments.

Examiner Bennett: Certainly, but bring out the fact that he did not comply with them. If he did not, then bring that out. There isn't any bearing in the record yet to indicate that he did or did not comply with them.

1734

By Mr. Weisman.

Q. Now, I understood you this morning in answer to my questions to say that your firm sold merchandise only at \$4.75—

Mr. Haycraft: I object to the repetition—

By Mr. Weisman.

Q. —except—

Mr. Weisman: Wait until I finish my question.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. —except where there were job lots; is that correct?

Mr. Haycraft: I object to that question.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Is that correct? A. Yes, sir; that is correct.

1736

Q. And is your practice with regard to the unit price of sale the same to-day as it was last year? A. No, I have changed this season, I have changed my price.

Q. Oh, this year? A. Not this year, only this—only right now for the present time, for the fall, I have changed my price line, that is all.

Q. In other words, your price line right now is \$2.87; is that not so? A. At the present time, yes, been changed to \$2.87.

Q. You did not tell us that this morning, did you?

Q. I show you a copy of the "Women's Wear" Daily for Tuesday, July 21, 1936, page 17, and ask you whether or not that full-page advertisement is an advertisement inserted by your firm?

1737

Mr. Haycraft: I object to the question as irrelevant and immaterial; not proper cross-examination.

Examiner Bennett: Well, I am going to let the answer in.

A. Yes, sir; it is.

1738

*Saul Lieber—For Commission—Cross.**By Mr. Weisman.*

Q. Were you aware of that advertisement when you answered my questions this morning as to the price range of your garments? A. Well, since this case——

Q. No, I asked you, were you aware of the existence of that advertisement? A. Yes, sir; but since we have——

Q. No, no.

Mr. Weisman: I now offer this in evidence (referring to "Women's Weekly").

Examiner Bennett: You may make your explanation, Mr. Witness.

1739

Mr. Weisman: May——

Examiner Bennett: Yes, you are trying to reflect on the integrity of this witness. Now, this witness has a right to defend himself in connection with your question.

Mr. Weisman: May I first offer this in evidence?

Examiner Bennett: No, it may not be received in evidence.

Mr. Weisman: May I mark it for identification?

Examiner Bennett: No, it may not be marked for identification.

Mr. Weisman: I submit I have a right to mark a paper for identification, Judge. How can I bring an error proceeding if it is not identified?

1740

Examiner Bennett: You can call this witness again if you want to put that in, that sort of thing. It is irrelevant to this proceeding, and I am going to invoke my rights. The objection has been made on account of irrelevancy, and it is irrelevant, and I am going to shut it off. You cannot mark it.

Mr. Weisman: Do I understand your Honor has ruled I may not mark this for identification?

Examiner Bennett: Well——

Mr. Weisman: I may not? I submit——

Examiner Bennett: Yes, yes, I will rule that you may mark it for identification, but on the face of the matter it is irrelevant:

Mr. Weisman: May I have an exception?

Examiner Bennett: I do not see why we should have irrelevant matter marked for identification. It is not to be marked for identification.

Mr. Haycraft: May the witness complete his answer, Mr. Examiner, to the question propounded to him?

Examiner Bennett: All right, yes, go ahead and explain.

A. My answer given this morning, which since I knew that this particular case refers to a period since the trouble began, as far as the Guild is concerned, until the latter part that referred to, up to the month of April, so therefore at that time I was making \$4.75 merchandise only. Since this case refers to that period, and at that time I was making \$4.75 merchandise only.

1742

By Mr. Weisman.

Q. Were you slightly helped in that explanation that you are now giving me by the substance of Mr. Haycraft's speech in connection with his explanation, his objection? A. No, sir; I happen to know—

Q. That is all— A. I read the complaint—I read the complaint before I signed it, and, therefore, I knew what I was talking about this morning.

1743

Q. Are you now engaged in the sale of merchandise at a lesser price than \$4.75? A. Yes, sir; I am making at the present time a line at \$2.87½.

Q. And for how long have you been engaged in such a practice? A. Well, we have started in around the first of June, we made a promotion. It is customary in the dress business when it gets around the latter part of the sum-

mer for the different dress manufacturers to make sort of promotions. They usually cannot sell \$4.75 merchandise, or the price of merchandise; retailers are looking for specials for different promotions, so I went in around the first of June and made a special promotion at \$2.87½.

Q. You say this is customary in the dress business to make such promotions? A. Yes, sir; for quite a number of concerns, they usually do that around this time of the year.

Q. Will you name any other concerns that do that? A. Yes, sir.

1745

Q. Will you give me the names of some of these other concerns that you say resort to such a practice and who have made it a custom so to do? A. Well, I can refer you, like the Paramount Fashion, where they ordinarily make \$3.75 line, and went into promotion for \$2.87½. There is a concern—

Q. Wait a moment. Is this the first time they have done that? A. Is this the first time? I don't know whether they have done it before or not. I know that is what they are selling.

Q. Why did you say it is customary, if you do not know it was ever done before? Does not the word "customary" imply to your mind that it had been done before? A. It has been done before; yes, sir; by quite a number of concerns.

1746

Q. Did you ever do it before? A. I never done that before; no, sir.

Q. This is the first time you resorted to that practice? A. This is the first time I resorted, owing to the business conditions, and I felt I couldn't get enough business on \$4.75 merchandise. I, therefore, have taken my best judgment and simply found that I can do more business, better business, at \$2.87½ for the month of June. Therefore, I went into that line.

Q. Did not you tell us this morning that your business was good this year? A. It was good; yes, sir.

Q. Well, then, what was the necessity for you to go into this promotion, \$2.87 line, if your business was good? A. Because in the field, around that time of the year, around June 1, the customers expect to come in and buy special merchandise for different sales, and they will not—

Q. Did not they expect— A. —and they will not pay—

Q. Excuse me. A. —and they will not pay \$4.75 for the line, and I thought it was better business judgment to go in and make \$2.87 merchandise.

Q. Did not you think it was better business judgment to do it last year also? A. It was not necessarily last year. Last year I was able to get the price. Since I have seen the trend towards cheaper merchandise for this year, so I use my best judgment in my own business.

1748

Q. In other words, it was your judgment that this year there has been a trend by the purchaser towards cheaper merchandise? A. Yes, sir.

Q. And that trend of the purchaser for cheaper merchandise affected your business to such an extent that you thought it was wise to reduce the price of your merchandise from \$4.75 to \$2.87½? A. Simply that was my judgment.

Q. Yes. A. As far as my experience of business, and I felt what I can do better in, what I can sell more merchandise, because I am no different than any other merchant that does use his own judgment as to what is best for him to do in his business.

1749

Mr. Weisman: May the question that I propounded to the witness be read to him again so that he may have an opportunity of answering it?

(Last question read.)

Q. Is that correct? A. I simply felt that it was much better—

1750

Saul Lieber—For Commission—Cross.

Q. No; is that correct or is that not correct? A. I simply use my judgment—

Q. Now— A. —in my own business, whatever is best for my own business.

Q. I see. A. And that is the judgment I have used, and I felt I could do more business at \$2.87½ for the month of June, so, therefore, I went into it, no other reason.

Q. Well, didn't you just say that the reason was that there had been a trend towards cheaper prices? A. That has been my opinion in my own business.

1751

Q. Then there was another reason, and that was the other reason; is that not so? A. That is my opinion, and my own business.

Q. Yes. A. That I felt I can do more in the other end of the business at \$2.87½ merchandise than I could do at \$4.75 for the month of June.

Q. And you felt that way because there was a trend to cheaper merchandise on the part of the consuming public; is that not so? A. That is what the demand was.

Q. Yes. A. That was my opinion of the demand.

Q. Yes. A. That is all of my own business, that's all. I only judge my own, I don't judge anybody else's business.

1752

Q. That is all we want to find out, that is all this inquiry concerns itself with. Now, I show you Commission's Exhibit 307, and ask you whether or not the order which you took for that merchandise had upon it the warranty stamp, or the warranty stamped upon it, as the Gimbel Brothers' order had? A. It did not.

Q. This did not? A. No, sir.

Q. How do you know that? A. I have got the proof here to show it to you.

Q. Let us have it. A. (Witness hands paper to counsel.)

Mr. Weisman: I offer this in evidence.

Examiner Bennett: Do you want that in evidence?

Mr. Haycraft: No, I object to it.

Examiner Bennett: Well, you may mark it for identification.

(Invoice from R. H. White Company, Boston, Mass., to Noxall Dress, 134 West 37th Street, New York City, was marked for identification Respondents' Exhibit 4.)

By Mr. Weisman.

Q. Referring to Respondents' Exhibit No. 4 for identification, is Respondents' Exhibit No. 4 the order which calls for the merchandise which was returned, and is referred to in Commission's Exhibits Nos. 307 and 308? Is it? A. Yes, sir.

1754

Q. And Respondents' Exhibit No. 4— A. I will put my glasses on.

(Witness examines papers.)

A. Yes, sir.

Q. And Respondents' Exhibit No. 4 is part of the same transaction which attorneys for the Commission have offered in evidence by their exhibits, Commission's Exhibits 307 and 308; is that not right? A. Yes, sir; that is.

Mr. Weisman: I now offer this in evidence, your Honor, Respondents' Exhibit No. 4.

Mr. Haycraft: That is objected to as irrelevant. The documents in evidence speak for themselves.

1755

Examiner Bennett: Are you contradicting the witness by this evidence?

Mr. Weisman: Why, certainly.

Mr. Haycraft: How would you?

Mr. Weisman: I am contradicting him by showing that these orders did not have this stamp.

Mr. Haycraft: He has already said that.

1756

Saul Lieber—For Commission—Cross.

Examiner Bennett: He has said that.

Mr. Weisman: And now I want to show that in connection with this:

Examiner Bennett: Well, he so testified.

Mr. Haycraft: He so testified in the record.

Examiner Bennett: He so testified. The testimony is complete on that. Why encumber the record with that?

Mr. Weisman: Because I think it is all a part of the same transaction, your Honor. All of these things went in on the basis they were part of the same transaction.

1757

Examiner Bennett: Oh, I will let it in as part of the transaction. It does not mean anything one way or the other.

(The document referred to, heretofore marked for identification "Respondents' Exhibit 4," was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. Well, did I not understand you this morning to state that if you did not accept the orders with the warranty stamp on them you could not get the business? A. Well, during—

Q. No. Did I not so understand you to testify?

1758

Mr. Haycraft: I object to the form of that question. How is the witness going to know what he understood?

By Mr. Weisman.

Q. Did you this morning testify in words or substance that in order for you to get these orders for merchandise it was necessary for you to accept them with the warranty stamp thereon? A. Whereby we were not able to get orders—

Q. No, no, did you so testify this morning? A. That what?

Q. That in order for you to get the business it was necessary for you to accept the orders with the warranty stamped on them? A. Well, I—

Q. There is no doubt in any event that the merchandise referred to in Commission's Exhibits 307 and 308 was the subject of an order which had been placed with you by R. H. White & Company of Boston, Mass., on September 9, and that the order did not have thereon the warranty stamp; is that correct?

Examiner Bennett: I will let him answer.

1760

By Mr. Weisman.

Q. The Court says you may answer. A. Well, there was no stamp on that order.

Mr. Weisman: Now, I move to strike out of evidence Commission's Exhibits Nos. 307 and 308.

Examiner Bennett: Motion denied.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. When were these dresses shipped?

Mr. Haycraft: Referring to the same exhibit?

1761

By Mr. Weisman.

Q. Referring to the exhibit for the respondent, No. 4.

A. Those dresses were shipped September 18, 1935.

Q. I see that they were tendered for return on October 30; is that correct? A. Yes, sir.

Q. In other words, approximately six weeks after they had been shipped; is that correct? A. Correct.

1762

Saul Lieber—For Commission—Cross.

Q. Assuming that any of your accounts had received merchandise from you and had retained it for six weeks and had attempted to return it at the expiration of such a six weeks' period, would you not have objected to its return at such a late date?

Mr. Hayercraft: I object to it as incompetent, immaterial and irrelevant, and having nothing to do with the issues in this case.

Examiner Bennett: Overruled. You may answer.

1763 A. Well, that is just a matter whereby who is the customer and so forth.

By Mr. Weisman.

Q. Am I to understand by your statement that with regard to R. H. White, you did not object to their returning it at so late a period to you; is that correct? A. I objected to the return because—and to the Guild's interference with the business; that is the only reason for that.

Q. Do you know that—do you not think that you should have objected because they waited so long?

By Mr. Weisman.

Q. Do you know that or not? A. I do not know what I would have done in this matter.

1764

Q. What do you mean you would not know what you would have done in this matter? Are you in the habit of receiving goods six weeks after they are shipped? A. In the matter of a business man, we may do that, yes, in order to keep on good terms with a retailer, sometimes we have to do that once in a while.

Q. Why do you do that from time to time? A. Yes, in the usual course of the business we have to do that some times.

Q. Your statement is to-day that you did not object to the allowance of the return from R. H. White & Company because you wanted to do business with them; is that correct?

Mr. Haycraft: That is objected to. That is not a correct statement of the witness' testimony.

Mr. Weisman: I am asking him whether it is or not. To save time I will ask it another way.

By Mr. Weisman.

Q. Did you or did you not complain to R. H. White about the allowance of this return?

Mr. Haycraft: Objected to as immaterial, irrelevant and incompetent.

A. Complain about what?

Examiner Bennett: Overruled.

A. Complained, if I may recollect correctly the reason, I do not recall the letter we wrote to them in regard to this merchandise. It had been away from our stock, and also that he had—that the Guild has no control over our business, and that they have absolutely nothing to do with us, and that we have absolutely nothing to do with the Guild, and therefore we refused to accept this merchandise.

I have the letter—that the Guild has not and is not running my business, and I absolutely refuse to accept the return. 1767

Q. You refused to accept the return because the Guild is not running your business. Did you not also refuse to accept the return because of the lateness of the tender of the merchandise? A. They would never have returned that merchandise if it were not on the instructions of the Guild. They only returned the merchandise because they got from the Guild an order to return the merchandise.

1768

Saul Lieber—For Commission—Cross.

Mr. Weisman: I move to strike out the answer as not responsive.

Examiner Bennett: I think that has been exhausted pretty thoroughly now.

Mr. Weisman: May your Honor hear the question?

Examiner Bennett: Yes, I will hear it.

(Question and answer read.)

Examiner Bennett: You can answer that "yes" or "no." If you did not do it on account of that, or as to why you did not do it.

The Witness: I did not understand.

1769

By Examiner Bennett.

Q. Look at those papers again, and I will ask you after you have looked at them, I will ask you a question and we will clear this matter up. A. Yes, sir.

Q. Have you looked at these papers? A. Yes, sir.

Q. Now, what was the reason given by your customer for the return to you of this merchandise? A. "Copies of Guild dresses; please credit."

Q. Is it because of that reason given to you that you refused to accept them? A. Yes, sir.

Examiner Bennett: There is your record.

By Mr. Weisman.

1770

Q. You are quite certain you have answered the Court correctly? A. Yes.

Q. Will you please explain to the Court why in your letter, Commission's Exhibit No. 308, if that was the only reason you said: "The merchandise in question was shipped to you under date of September 10, firstly, they have been out of our stock too long a period of time to warrant our giving you credit." A. Will you please finish the rest of the letter on that, please?

Mr. Weisman: I have read all I want.

Mr. Haycraft: The witness is entitled to have the whole letter.

Examiner Bennett: Yes, you must let him have the letter if you are going to base your questions on that.

The Witness: I would like——

Mr. Weisman: Your Honor has not heard my question. I want him to answer my question "yes" or "no" and the rest of the letter has nothing to do with it.

Mr. Haycraft: I object unless the witness is given an opportunity to see the whole letter. If he is going to insist on taking just one clause out of the letter that is highly improper. As I understand it, you are quoting a clause from the letter and propounding the question and you are withholding the letter from the witness, and I insist that is improper.

Examiner Bennett: It is. Give him the letter.

Mr. Weisman: Does your Honor understand my question?

Examiner Bennett: I understand it, and I gave him a correct summary of what you had asked him and now you contradicted it.

Mr. Weisman: No, his own letter contradicts it.

By Mr. Weisman.

Q. Will you explain it, look at the letter and explain it. A. I want—there are additional—may I ask here that counsel has not finished the balance of this letter. There is—I would like the answer to it to be complete. There is more in that letter. I would like to answer it all the way through, as a whole. We have other reasons here why we refused to accept that return on this letter from which he read.

1774

Saul Lieber—For Commission—Cross.

Examiner Bennett: All right. The reason given there is not the only reason.

The Witness: No, sir; that is not the only reason.

By Mr. Weisman.

1775

Q. And the reason that you gave the Court in answering his query to you now appears by your very own letter, appears to be not the only reason. Since I have not done the writing of this letter, I do not do any of the letter writing, the correspondence of my office, therefore, I do not know possibly the contents of this letter, but I know that we refused this merchandise; as far as I know, we refused this merchandise for this reason, that it is on account of the Guild.

Q. If you did not know, why did you want the Court to believe you before when you told the Court that the only reason you refused to receive this return of the merchandise was because of the Guild situation. A. Because I think—

Mr. Haycraft: I call your Honor's attention to the fact that he did not state it was the only reason, but it was "the" reason.

1776

Mr. Weisman: That is a very fine piece of pettifoggery. What do you understand that the reason could be? What is this very fine lexicographer's distinction that you are trying to draw here between the word "the" and the word "only"; are they not synonymous?

Mr. Haycraft: You seem to think they are.

Mr. Weisman: What do you say?

Mr. Haycraft: Why should I tell you? You are the interrogator, not me.

Mr. Weisman: If you want to be fair about it, why not state what you think the difference is that you are trying to make here?

Mr. Haycraft: I will state what I please.

Mr. Weisman: Evidently you find yourself baffled by your own statements.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Haycraft: Mr. Examiner, we have no objection to this witness being asked whether this was the only reason, if that question was put to him. I have no objection, or asking him if there was any other reason.

Mr. Weisman: The Court did all the interrogation that was necessary on that point.

Mr. Haycraft: All right.

By Mr. Weisman.

Q: With regard to Commission's Exhibits 310, 311, 312, 313, 314 and 315, inclusive, which was the order from Kaufmann's, did that order have the Guild stamp on it?

A. No.

Q. I show you this paper. Is this the order referred to—which ordered the goods referred to in Commission's Exhibits Nos. 310 to and including 315? A. Yes.

Mr. Weisman: I now offer this in evidence.

Mr. Haycraft: Same objection.

Examiner Bennett: I will allow it in. I think it is innocuous, but this seems to be the best way to show it in the record.

(The invoice from Kaufmann's, Fifth Avenue, Pittsburgh, Pa., to Noxall Waist & Dress Company, New York City, N. Y., was marked "Respondents' Exhibit 5" and received in evidence.)

By Mr. Weisman.

Q. When you refused to accept the return of these dresses, why did you refuse to accept the return? A.

1780

Saul Lieber—For Commission—Cross.

Owing to the fact that it has been ordered by the Guild, the return of this merchandise.

Q. Is that the only reason? A. I do not remember.

Q. As a matter of fact, does not your Exhibit No. 314 show that you refused to accept that for many other reasons, among which being the reason that they tendered the return of these too late to you? A. They were returned for both reasons.

Q. Was one of the reasons that you refused to accept the return because the return was tendered too late after the shipment by you to the purchaser? A. Oh, no, that was not the reason.

1781

Q. What did you mean when you said in exhibit—Commission's Exhibit 314: "Firstly, the dresses in question were shipped to you some time ago, and they are too old to warrant our acceptance." Did you not mean that they had kept them too long to now tender the return? A. I did; yes, sir; and also on account of the return of the Guild, for both reasons—and they never would have returned them if they didn't get instructions from the Guild to return them. They would not have attempted to return the merchandise.

Q. The first reason that you refused to accept the return was because the tender was too late; is that so? A. That was for both reasons.

Q. Do you in your letter give that as your first reason? A. What do you mean?

1782

Q. "Firstly, the dresses in question were shipped to you some time ago and they are too old to warrant our acceptance." Is that so? A. That is just a matter of dictating a letter. Sometimes you make that reason first on account of that fact, and in the next letter it is first on account of the Guild.

Q. In this one you did give that as your first reason, did you? A. Yes, that is what the letter states.

Q. You were not telling these people an untruth, were you? A. That was the truth.

Q. The truth was that the first reason you would not accept these dresses was that they were tendered for return too late? A. Yes, but these people never would have returned them if they had not gotten instructions from the Guild to return them. This merchandise was salable merchandise, and they never would have returned it if it had not been on account of the instructions from the Guild for them to do so.

Mr. Weisman: I respectfully ask that the witness not seek to out-shout me. I submit that an orderly procedure here would be of greater benefit to all concerned.

1784

Examiner Bennett: You are not trying this case before a jury. The more you labor in that way with your witnesses less attention will be paid to the testimony you bring out.

Mr. Weisman: I regret that exceedingly. Of course, your Honor, I cannot help it, but someone who is not present where this testimony is brought out does not have the opportunity to observe the witness.

Examiner Bennett: We are all present, but it does not serve any useful purpose for you with the Examiner, and I do not think it will serve you any useful purpose with the Commission to do that. This is all in the record and it cannot be missed. Why go ahead indefinitely and try to stress it?

1785

Mr. Weisman: Because I think it is of importance. Perhaps I am mistaken, for the Commission, or for your Honor to observe the reluctance with which the witness will concede what is obviously the fact, as being highly illuminative of the worth to be given the rest of his testimony in this case.

1786

Saul Lieber—For Commission—Cross.

Mr. Haycraft: I object to that.

Mr. Weisman: Do you object to my addressing the Court?

Mr. Haycraft: I object to the statement.

Mr. Weisman: Oh, you object to my statement?

Mr. Haycraft: Yes.

Mr. Weisman: It is the truth. I do not see why you want to object to it.

By Mr. Weisman.

1787

Q. With regard to Commission's Exhibit No. 316, which refers to a transaction from Joseph Horne & Company, did the order for that merchandise have on it the so-called warranty stamp? A. Yes, it did.

Q. This is an order for that merchandise referred to in Commission's Exhibit No. 316? A. Yes, sir. Style No. 222?

Q. Yes. A. Yes.

Mr. Weisman: I now offer this order in evidence as part of the transaction.

Mr. Haycraft: I object.

Examiner Bennett: I will let it in. You will have an objection and exception. Evidently the witness brought this thing in here for some purpose.

1788

(Invoice from Joseph Horne Company, Pittsburgh, Pa., under date of September 13, 1935, to Noxall Waist & Dress Company, New York, N. Y., was marked Respondents' Exhibit 6 and received in evidence.)

By Mr. Weisman.

Q. I asked you this morning a number of questions with regard to the warranty stamp which appeared on the Gimbel order, which is Commission's Exhibit No. 306.

Then I asked you the same question—rather, I do not believe I did ask you that about any other exhibit. However, if I asked you the same question about this exhibit, would your answers be the same, to wit: You understand the meaning of the warranty and so forth?

Mr. Weisman: Your Honor, I am trying to save time by this method.

A. The meaning is the same, I think, but I would like to explain something in this matter that is different; this order, in particular, is different.

Mr. Haycraft: Let him try to explain the difference if he sees it.

1790

Mr. Weisman: Now, look. That is not right.

The Witness: This order in particular.

Mr. Weisman: Will your Honor advise this witness that when I make an objection he should cease talking until I complete my statement of my objection?

Examiner Bennett: Yes.

By Mr. Weisman.

Q. Have you heard that? A. Yes, sir.

Mr. Weisman: I will withdraw the last question.

By Mr. Weisman.

1791

Q. Where was this order taken, referring to Respondents' Exhibit No. 6?

Mr. Haycraft: For identification.

Mr. Weisman: No, it is in evidence.

Examiner Bennett: It is in evidence.

A. This order was taken in our showroom on September 13.

1792

Saul Lieber—For Commission—Cross.

Q. Your showroom in New York? A. Our showroom in New York.

Q. At the time that it was taken, did it have the stamp on it? A. No. At the time this was taken, it was taken on one of our order sheets. It is customary for a lot of buyers to just leave the order and mail the confirmation afterwards. During that time in the course of the conversation the buyer distinctly called my attention to it that they could only place this order with this stamp on it.

1793

I had quite a conversation with him and he says he cannot get the people to send in the order unless it has the stamp on it. Under those conditions I was forced to accept the order with this stamp on it, otherwise it would mean a great loss in our business. If I did not accept this order with this stamp on it I did not get the business.

Q. When you say you were "forced," you mean that you could either accept the order with the stamp on it, or you would not get the order; is that right? A. That is right.

Q. Nobody offered to hit you? A. That is not the question about it; of course I did not have anybody that wanted to hit me, but in the meantime it is hurting the business if I do not accept the order.

1794

Q. I understand. All I want to know is when you used the word "forced," you mean if you wanted the order you had to make it on the terms that it was tendered; is that correct? A. Otherwise I would lose the business. Joseph Horne & Company, if I did not accept it, because the buyer—she would not leave the order with me unless I got that stamp with it, they said.

Q. In other words, if you were not willing to abide by the terms of the stamp; if you were not willing to promise that the merchandise you were going to ship would not be copies of Guild merchandise, the buyer for Horne's did not want to buy what you were offering; is that so? A. Oh, no.

Q. No? A. Oh, no.

Q. It placed upon the seller a warranty—you are the seller—and you told me this morning that you understood what the word "warranty" meant? A. Yes.

Q. "That this order is placed upon the seller's warranty that the above garments"—and you knew that the word "garments" that meant the garments ordered—"are not copies of styles originated by members of the Fashion Originators Guild of America, Inc." Is that so? A. Yes.

Q. You knew the meaning of those words? A. Yes.

Q. And the buyer said to you if you were not willing to take the order, an order which contains a promise on your part to that effect, I do not want to give you the order; is that so? A. If I—

Q. Is that so? A. Well, if I keep on refusing orders I might as well go out of business.

Mr. Weisman: I ask that that be stricken out. I also ask that the witness be directed to answer the questions. Obviously this witness has had a little help over the noon recess.

Mr. Haycraft: I object to that. There is no evidence of anything of that sort. I think that is quite improper.

Mr. Weisman: I did not say you did it. If somebody yelled "Thief!" in this room I would not jump because my conscience is clear.

By Examiner Bennett.

Q. Did that occur or did that not occur? A. The buyer simply stated that he could not leave the order unless—could not send in the confirmation unless it has that stamp on. This same thing occurred with quite a number of accounts in my showroom that walked in there.

Examiner Bennett: Just wait a moment.

Mr. Weisman: I move to strike.

1798

Saul Lieber—For Commission—Cross.

Examiner Bennett: It may be stricken. That can be brought out on further redirect examination, Mr. Haycraft, if you wish, from this witness. If you will just answer the question perhaps it will stop some of the contention that we have been faced with here.

By Mr. Weisman.

Q. Your answer was "yes," I take it?

Examiner Bennett: He answered it. I struck from the answer, as shown in the record, what was in addition thereto.

1799

By Mr. Weisman.

Q. And you also knew by the further wording of that stamp that the purchaser reserved the right to return any merchandise which was not as you promised; is that so?

A. It was a promise as far as the stamp was concerned; not me.

Q. Yes, yes. That is correct, is it? A. That is correct because I was forced to take it. I was forced to do so or lose the customer.

Q. That is not an answer to my question.

Mr. Weisman: Will your Honor tell this witness that he does not strengthen his case by reiterating time and time again that he was forced to take the order when it is perfectly apparent that he could take the order or leave it?

1800

Mr. Haycraft: No, no. He has to take it that way or else.

Mr. Weisman: I am addressing myself to the Court.

Mr. Haycraft: I move to strike out the statement of counsel as highly improper.

Examiner Bennett: I will strike out the additional matter that was in addition to the answer to the question.

By Mr. Weisman.

Q. I notice that the terms of this order were 8-10 E.O.M. Is that correct? A. That is correct.

Q. You were likewise forced to give them 8-10 E.O.M., were you not? A. That is our standard terms.

Q. In other words— A. We are in business, and that has been our terms for years; 8-10 E.O.M. That is our terms to everybody.

Q. If you did not give them 8-10 E.O.M. they would not give you the order? A. There is no question about terms. There was no discussion about discounts or anything. The people know that we have done business with them for years, and that those are my terms. There was no question about terms at all. 1802

Q. They found it necessary to put that on the order, did they not? A. That is put on their order, but every house allows, at least our house allows 8-10 E.O.M. And anybody who does business with our firm gets that. We have no other terms.

Mr. Haycraft: I object as not proper cross-examination.

Examiner Bennett: There is nothing before the Examiner just now. Maybe this is through. 1803

By Mr. Weisman.

Q. I notice that there is also put on this order the following: "This merchandise is ordered and will be accepted only on the express understanding that no part of the work or the manufacture of any of the merchandise is done by a minor under the age of 14 years or in a dwelling or home or elsewhere that is not a regular, sani-

1804

Saul Lieber—For Commission—Cross.

tary, mercantile establishment or factory." You were also forced to accept this order with that printed on it, were you not?

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: That is the vice of letting in respondents' exhibits on cross-examination. You get in the exhibit for the respondents and then you devote your whole attention to cross-examination on that exhibit, which is not a part of the affirmative case.

1805

Mr. Weisman: Yes, it is, Judge, in my opinion.

Examiner Bennett: No, it is something that you asked to put in.

Mr. Weisman: I do not think so.

Examiner Bennett: No, no, it is not. The facts are all in the record that the Commission wants in the record up to that time. That is the reason that I am going to keep these things out hereafter just because of your abuse of them; just because of your abuse of this particular thing.

Mr. Weisman: May I explain my purpose and you will see it is not an abuse.

1806

Examiner Bennett: Whatever the purpose is the proper place is in your defense of the matter. I am not going to permit it, and I am going to just shut right down on that sort of thing in the future to prevent any such abuse as this.

Mr. Weisman: I just want a moment's time, your Honor, so you will see that I am not abusing the privilege. This witness has testified again and again that he was forced to do this and to do that, and I am showing by his own statement that he, in order to get this order, had to accept these other things

on the order, and he accepted them and makes no complaint about them, but he claims that he is "forced" simply because he did not like these particular terms.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. With regard to Commission's Exhibits Nos. 318 and 319, also No. 320, did the order which purchased the goods, which is the subject matter of these exhibits, have the Guild stamp on it? A. No, sir.

1808

Q. Have you got that here? A. There is my own order.

Q. This is the order for the merchandise referred to in here; in these Exhibits 318, 319, and 320. A. Yes.

Mr. Weisman: I offer it in evidence as Respondents' next exhibit.

Examiner Bennett: Do you simply want to put it in for what it shows?

Mr. Weisman: Yes, your Honor.

Mr. Haycraft: May the record show that I have an objection to it.

Examiner Bennett: Yes.

(Invoice of Noxall Waist & Dress Company, sold to Luries, Baltimore, Md., was marked "Respondents' Exhibit 7," and received in evidence.)

1809

By Mr. Weisman.

Q. Do you remember the reason that you refused to accept the return of these goods referred to in Commission's Exhibit No. 318? A. I object—

Q. Do you understand the question? I just asked you, do you remember the reason that you refused to accept

1810

Saul Lieber—For Commission—Cross.

the return of the goods referred to in Commission's Exhibit No. 318? A. Oh, I remember that they were returned on account of the instructions from the Guild——

Q. (Interposing) I did not ask you why they were returned. You understand English, do you? A. What?

Q. Do you? A. I think I do.

Q. If you think you understand English, do you understand my question when I say to you when these garments were tendered to you for return and you refused to accept the return, do you recall the reasons that you refused to accept the return? A. Well——

1811. Q. Do you understand that? A. I understand the reason I refused—that they wrote us a letter, and that they have refused to accept our merchandise is what I can remember of this matter.

Q. No. Evidently you still do not understand or I cannot make myself plain.

Mr. Haycraft: I must object. The answer is all right.

Mr. Weisman: The answer does not mean anything at all. It is certainly not an answer to my question.

Mr. Haycraft: I think it is a proper answer to such a question.

Mr. Weisman: Obviously he did not answer my question.

1812

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Read the question so that we can see what it is.

(Question read.)

Examiner Bennett: Read the answer

(Answer read.)

Mr. Weisman: That answer is perfectly unintelligible. I will ask that it be stricken out, and I will ask it again.

Examiner Bennett: I think it would be better if you would ask it in several parts. I think you would have better success. It may be stricken. Proceed.

By Mr. Weisman.

Q. Do you remember the return of this merchandise referred to on Commission's Exhibit No. 318? A. Yes.

Q. Do you remember that you did not want to accept the return? A. I do remember that.

Q. Do you remember that you had certain reasons that you gave the purchaser why you would not accept the return? A. The reasons—

1814

• Q. (Interposing) Do you remember that you gave those reasons? A. Yes.

Q. I want to know from you what were the reasons that you gave to the purchaser for your refusal to accept the return of this merchandise?

Mr. Haycraft: I object to that. The letter is in evidence and speaks for itself. I demand that the witness be allowed to refresh his recollection from the letter before answering the question.

Examiner Bennett: Let him refresh his recollection on the letter if you want him to answer that question in that form.

Mr. Weisman: You asked him to direct his own reason for that and I think I have a right to interrogate him about it to see what his recollection as to the reasons is.

1815

Examiner Bennett: I think it would save time to do it otherwise.

By Mr. Weisman.

Q. Very well. Do you want to refresh your recollection as to what reasons you gave, or have you a present recol-

1816

Saul Lieber—For Commission—Cross

lection of the reasons you gave for your refusal to accept the return of this merchandise? A. I can refresh my mind and answer it the best I can remember, either way.

Q. Look at Commission's Exhibit No. 320. After looking at it see if you do not remember that you did not give these people the following reasons for your refusal to accept the return of this merchandise, and——

Mr. Haycraft: I object to the form of the question.

Mr. Weisman: May I finish the question? I object to being interrupted in this manner.

1817

Mr. Haycraft: I object to the form of the question so far as you have gone. It is obviously incompetent, and I do not see any reason to continue with it.

Examiner Bennett: I will let you complete the question.

By Mr. Weisman.

"Firstly: The dresses in question were sold to you at a special concession in price and job merchandise is not returnable." "Secondly: The merchandise in question was shipped to you under date of September 24 and is now too old to warrant our accepting the same." Were those the first and second reasons that you gave to this purchaser?

1818

Mr. Haycraft: I object. The letter is in evidence and speaks for itself. Why cross-examine this witness as to what is in a letter that is already in evidence? It can serve no possible purpose.

Mr. Weisman: It is very important because of the testimony this witness gave on direct.

Mr. Haycraft: That was merely to identify the letter.

Mr. Weisman: It was that he refused to accept the merchandise because of the Guild.

Examiner Bennett: Overruled. He may answer.

By Mr. Weisman.

Q. The Court has said that you may answer. A. This merchandise, as I recollect from that letter, was refused for the purposes stated in that letter, and also—or also refused in regard that the Guild has ordered them to return the merchandise. There are three reasons why it was refused on that letter and not only two.

Mr. Haycraft: As a matter of fact, I have no recollection of asking this witness with respect to this specific instance as to why they were returned except to put in the letter. I do not think this is proper on cross-examination to take each part of the letter and cross-examine the witness on it.

1820

Mr. Weisman: This letter says "Firstly," and it says, "Secondly," and I certainly can ask him about it.

Mr. Haycraft: That is something which is simply a matter of argument. That is for you to argue before the Commission. You are simply trying to split this up into one or two parts, and trying to throw a cloud on the matter.

Mr. Weisman: He is trying to explain this thing away the best he can, and you are doing your best to help him. The truth will prevail in the end anyhow. Why not permit the examination to go ahead in orderly fashion.

1821

Mr. Haycraft: I object to that, your Honor. It is entirely uncalled for.

1822

*Saul Lieber—For Commission—Cross.**By Mr. Weisman.*

Q. When these dresses were returned to you, did you make any effort to ascertain—withdraw that. Did you care whether they were copies of Guild merchandise or not?

Mr. Haycraft: That is entirely irrelevant and immaterial, your Honor.

Mr. Weisman: It goes to the value of all of his testimony, and to the value to be placed upon these exhibits. It goes to the probative value which may be given to the witness' statements here on the witness stand, the weight and credit that may be attached to any statement that he may make.

1823

Mr. Haycraft: What that has to do with the issues in this case is more than I can see.

Mr. Weisman: It is very important.

Mr. Haycraft: Suppose that this witness did breach the contract. Suppose he breached the contract in every way, manner, and form which he could. What has that to do with this case? Has that anything to do with the issues in this case? If the contract was gotten under force or duress, what difference does it make? It does not make any difference why he breached his contract, or why he did not live up to it, even supposing that he did.

1824

Mr. Weisman: I am under the impression that your Honor does not enjoy these extended colloquies. I do not want to be under the disadvantage here one way or the other because I am not engaged in that kind of a matter when it comes up because I do not desire to weary the Court, but when I am shouted at in this fashion, I feel I should be entitled, without any such a show, to show that this witness took these orders and absolutely no regard as to whether or not the terms of the order were fulfilled.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I do not see what probative value that has. I will let him answer the question, however, if he cares to. Read the question.

Q. (Question read.) A. I did not know even whether they were copies of the Guild or not; it makes no difference to me one way or the other.

By Mr. Weisman.

Q. It did not make any difference to you one way or the other; is that so; is that what you said? A. I made the statement that these merchandise—I do not know what I said.

1826

Q. Well, let us look into that. That is a new one. Do you mean to say that you do not know what you said a second ago? Do you not forget things once in a while? Yes, you do. I do, too. I am no different from you.

Q. Wait a minute. This is something very strange. Do you mean to state that you do not remember that the immediate question before this was asked and that you said that you were indifferent, in words or substance, that you were indifferent as to whether or not the dresses you shipped out on these orders were copies of Guild merchandise or not?

Mr. Haycraft: Mr. Examiner, obviously Mr. Weisman has no better memory than the witness, to say the least, as he has shown that himself because he cannot even remember his own question. That is not what he asked the witness.

1827

Mr. Weisman: I am not under oath, and I am not testifying. I am simply the examiner.

Mr. Haycraft: It is a question of memory. I think you have shown up far worse than the witness. The comparison does not do you very much good.

1828

Saul Lieber—For Commission—Cross.

Mr. Weisman: Perhaps not. I do not want to enter into an argument and shout. I certainly do not want to go into a shouting festival with my friend, if he will just let me alone and let me question this witness, if he will be quiet for a moment maybe I can refresh this witness' recollection.

Examiner Bennett: We will take a 10-minute recess.

(There was a short recess taken.)

Examiner Bennett: Come to order.

Mr. Weisman: May I have the last question?

(Last question and answer read.)

1829

By Mr. Weisman.

Q. So that, I take it, that you told the customers who placed these orders with you, when they attempted to return the merchandise as being copies of Guild merchandise, that you did not care whether or not they were copies of Guild merchandise; is that correct?

Mr. Haycraft: I object to the question; improper in form. I do not think the Commission is interested in how counsel takes it.

Mr. Weisman: Well, is it a fact? Do you want to waste a lot of time? My "I take it" does not mean I personally take it. I mean, is it a fact.

Mr. Haycraft: That is irrelevant and immaterial. What is the difference?

1830

Examiner Bennett: Well, I am going to let him answer. I doubt about its relevancy, but we will give him the benefit of the doubt.

A. It made no difference to me when I showed my line, that is what I showed, and that is what the customer has bought and nothing else. I showed my line, and that is what they bought.

By Mr. Weisman.

Q And it made no difference to you whether those dresses that you sent out on these orders, which contained these stamps, were copies of Guild merchandise or not?

Mr. Haycraft: I object to that, Mr. Examiner. It seems to me that we are now getting into a field that is entirely foreign to the direct examination. There was no question asked of this witness with respect to whether or not the dresses he sold were copies of other manufacturers' merchandise, and that apparently is where this question is leading,—not being an issue in this case—

Mr. Weisman: We are trying—

1832

Mr. Haycraft: —it seems to me we should stop it now before we get into it.

Mr. Weisman: Now, isn't that nice? You are making a guess, based upon your effort to read my mind, as to what I am going to do next, when you could have saved yourself all of that trouble if you had only read your own exhibits and prepared your case. Now, I say to the Commissioner that the basis of these exhibits is statements contained in the very exhibits that you offered into evidence on your direct examination. You do not have to go as far as you did and have to guess. I ask that the witness be directed to answer.

Mr. Haycraft: Mr. Examiner, it doesn't make any difference to the issues in this case whether the dresses were or were not copies of Guild merchandise.

1833

Mr. Weisman: I did not hear that.

Mr. Haycraft: I say, it does not make any difference to the issues in this case whether the dresses involved in the transactions were or were not copies of Guild merchandise.

1834

Saul Lieber—For Commission—Cross.

Mr. Weisman: Well, before you—

Mr. Haycraft: The sole issue is that they were returned, as far as this manufacturer is concerned, on the alleged—on the statement, or claim, that they were, and we certainly are not going into the question of issue, whether they were or were not—

Mr. Weisman: Well, if you are willing, and if I get your statement correctly, to stipulate to the facts that whether or not the dresses were copies or were not copies is immaterial, and no claim is urged by you with regard thereto, I will refrain from further examination on this query. Do I so understand? Do I understand you are willing to let your statement made a moment ago in order to induce the Court to make a ruling,—do I understand you are willing to let it have the effect of a stipulation in this proceeding? Are you willing to do that?

1835

Mr. Haycraft: My statement stands for whatever use you wish to make of it.

Mr. Weisman: No, I want to know what you do want to make of it? You urged upon the Court as a reason for curtailing my examination. I submit my examination may be curtailed, thereupon, but not upon a statement, unless you are willing that the statement be deemed a stipulation in these proceedings. Then I say I will not pursue this inquiry any further.

1836

Mr. Haycraft: You may make what use of it you may see fit.

Mr. Weisman: Then I ask that the witness be permitted to answer. A lawyer who will urge on the Court on one thing, and then say that is the reason but I refuse to let it be a stipulation and a binding reason, why, I cannot rely on it.

Mr. Haycraft: Refuse nothing.

Mr. Weisman: Then do you grant me it shall be a stipulation, if you don't refuse? Do you?

Mr. Haycraft: I do not know what you mean by stipulation. By that, do you mean, will you stipulate that you will not interrogate witnesses on this question?

Mr. Weisman: If you will stipulate, yes, I mean just that. I always know what a stipulation means. I mean, that I have understood you to say that whether or not the dresses were returned, were copies, is immaterial.

Mr. Haycraft: Absolutely.

Mr. Weisman: And that that is not an issue in this case.

Mr. Haycraft: Absolutely.

Mr. Weisman: And there is no need for us to query, or to prove that they were, in fact, copies of Guild merchandise; that the vice of this case is in the contention, something of that sort——

Mr. Haycraft: Exactly.

Mr. Weisman: If you are willing to make that stipulation, I drop this line of inquiry from this witness; that is all.

Mr. Haycraft: Well, that——

Mr. Weisman: If that is your stipulation?

Mr. Haycraft: ~~I am saying~~ that is the contention of the Commission.

Mr. Weisman: All right.

Mr. Haycraft: Use it or treat it as you please.

Mr. Weisman: I accept it as a stipulation.

Mr. Haycraft: I do not make stipulations of that type. I do not have authority to make stipulations, if you call them stipulations, but I am making this statement, it is the Commission's contention.

Mr. Weisman: Do I understand it is the Commission's contention that if the garments were in truth

1840

Saul Lieber—For Commission—Cross.

and in fact copies of members' merchandise, that has no bearing on this case?

Mr. Haycraft: Absolutely.

Mr. Weisman: All right, then, I will not ask him any further. I will rest on that. That is fine. When I say that is fine, I mean I do not want to pursue any inquiry to prove something that is conceded.

Examiner Bennett: All right, all right.

By Mr. Weisman.

1841

Q. With regard to Commission's Exhibits 321 and 322, have you got the order, which ordered the merchandise which was the subject matter of that return? A. I have not. What is the name on that? Pardon.

Q. Oh, excuse me, Schunemans and Mannheimers. A. I have not.

Q. Do you know whether or not that order, calling for those goods, contained the warranty stamp? A. I do not.

Q. Can you look up that order between now and tomorrow morning? A. That is a question, if I can find it.

Q. Well, will you look for it? A: Yes, sir, I will.

Q. And if you can find it will you bring it to Court? A. Yes, sir.

Q. Thank you.

1842

Mr. Haycraft: Mr. Examiner, I object to the witness being requested to do that, for the simple reason that when the last witness we had on the stand was requested to bring certain documents to court he did bring them to court, and then counsel did not interrogate him about them.

Mr. Weisman: Oh, you are mistaken. The Court ruled I could not. We had all of these things here, and I want you to know that I am going to try and get an order for those documents. You are not finished with that request.

Mr. Haycraft: I am talking about correspondence; here it is right here (indicating).

Mr. Weisman: Let me ask you something. What right have you got to object to asking the witness for anything that I want personally, if he is gentlemanly enough to give it to me?

Mr. Haycraft: I have a right to object for any reason I see fit.

Mr. Weisman: I thought it was your duty to investigate, not to prosecute. Do you not want all the facts that can be brought out to be brought out?

Mr. Haycraft: I do not take my instructions from you, that is a cinch.

Mr. Weisman: I am not instructing, I am querying.

By Mr. Weisman.

Q. Did you testify this morning that about 50 per cent. of your business is done with co-operating retailers who request that your orders containing the warranty that the merchandise shall not be copies of Guild merchandise? A. About 50 per cent., yes.

Q. Can you give us any information which will give light on the fact that although 50 per cent. of the merchants whom you do business with demand that you make such warranty to them yet, in connection with the orders referred to in Commission's Exhibits 307 to 309, inclusive, which you have produced, only one of them has this warranty stamp? A. Yes, I can explain that. You take during the month of September, I believe it was the middle part of September, it seemed to me that the Guild began to press the retailers to use that stamp. Prior to that we very seldom got an order from any of these concerns that we are getting orders with stamps today, while we never got it—we got their business, but we never received any orders

1846

Saul Lieber—For Commission—Cross.

with any stamps from these people here. Then later on it seemed to me they have been forced by the heads of the concerns to use a stamp on every order that they have issued, from that time on, around September, on.

Q. On the order from Schunemans & Mannheimers, do you remember when that was taken? A. I said I do not remember when that was taken. That was taken, offhand, I believe in January, and I haven't got the record, but just, if I remember correctly, I think that was taken in January, 1936.

Q. And you do not remember whether that had the stamp? A. I said I do not remember; no, sir.

1847

Q. Now, the order from Luries, do you remember when that was taken? A. Well, the date is right on the order there; you have got the order right there in front of you.

Q. Well, they took the order out. A. Well, it is there, presented to you, some time in September, I believe. I don't know for sure. Some time in September.

Q. Well, let us see. Luries was in September. Horne's was in September. Are you an officer of the Popular Priced Dress Manufacturers—

Mr. Haycraft: I object.

Examiner Bennett: What is the purpose of it?

Mr. Weisman: Popular Priced Dress Manufacturers is an organization which Mr. Hirsch was president of, which is committed to the fact, from the testimony, as he testified, that they are against all protection of design, and so forth.

1848

Examiner Bennett: All right, you may answer.

A. Vice president.

Q. How long have you been vice president? A. Vice president since 1934, the latter part of 1934.

Q. When was that organization organized? A. In the fall of 1934.

Q. So you have been vice president of it ever since it was organized? A. Yes, sir; I have been president; I have been reelected.

Q. President or vice president? A. Vice president.

Q. Were you one of the members of that organization that went to Washington at the time that there was under discussion the inclusion in the Code of Fair Competition for the Dress Industry a provision which would have made copying of original designs an unfair trade practice?

Mr. Haycraft: Now, Mr. Examiner, I object to that question. Yesterday, or day before yesterday, when Mr. Hirsch was asked the same question some foundation had been laid by direct examination, or he was asked whether he was an officer of the organization on direct examination. You allowed the answer on the same ground. Now, we are going into the same thing without any foundation whatever on direct examination. It is not proper cross-examination.

1850

Mr. Weisman: You do not want to hide the fact that this witness has certain tendencies?

Mr. Haycraft: I have other witnesses here who will testify on this situation.

Examiner Bennett: Overruled. You may answer that question.

By Mr. Weisman.

1851

Q. The Court says you should answer it.

The Witness: May I have the question?

Q. (Last question read.) A. Yes, sir.

By Mr. Weisman.

Q. And your purpose in going to Washington was to lend aid and assistance to defeating of such a provision being written into the code; is that correct?

1852

Saul Lieber—For Commission—Cross.

Mr. Haycraft: May I have an objection to all of this line of cross-examination?

Examiner Bennett: Yes, you may have the objection; it is overruled. The witness may answer.

A. Since I believe there are no—

By Mr. Weisman.

Q. No, not since you believe, what was the purpose of you going there?

Mr. Haycraft: It is irrelevant and immaterial, too, Mr. Examiner.

1853

A. I would like to answer it in such a way, the reason why I went there—

By Mr. Weisman.

Q. I merely asked you the purpose—I merely asked you this question: Was your purpose in going there to lend your aid and assistance to those who sought to prevent the writing into the Code of Fair Competition for the Dress Industry of a provision which would have made the copying of original designs an unfair trade practice?

Mr. Haycraft: I object to that, irrelevant, and immaterial.

1854

Mr. Haycraft: The Court has already ruled.

Examiner Bennett: Yes. Well, I have ruled practically on that.

By Mr. Weisman.

Q. Now, will you answer that? A. I believe that there is no such a thing.

Q. No, no, I did not ask you what you believed. I asked you what was your purpose in going there? Do you not

want to answer my questions? Will you answer the last question for me? Are you willing to answer my questions?

A. To the best of my knowledge.

Q. Now, did you not, when I asked you about your purpose in going there, did you not understand my question?

A. Do you mind reading that question again, please? Q.

No, I am asking you now, did you understand the question then? A. Well, I am ready to give you my reason why

but you won't let me give you my reason why.

Q. Listen to my question and please try to answer it, we will both save time. I will repeat the question again so there can be no question about the question: Was the purpose of your going to Washington at the time referred in the previous questions so that you could aid and assist in preventing the writing into the Code of Fair Competition for the Dress Industry of a provision which would have made the copying of original designs an unfair trade practice? Was that your purpose in going there? A. No, my purpose of going—

Q. All right; that is the answer. A. —of going there—

Q. That is your answer. A. All right.

Q. And you testify now that you did not go there for the purpose of having this copying of original designs denominated an unfair trade practice; is that correct? A. We went to—

Q. No, is that correct, what I have stated?

Mr. Haycraft: He just answered you.

By Mr. Weisman.

Q. Do you want the question read again to you? Will it help you? A. Yes.

Q. Will it help you to have it read? A. Would you mind reading it?

Mr. Weisman: Read it again. If that will help him, and see if he can answer it.

1858

Saul Lieber—For Commission—Cross.

Q. (Last question read as follows:) "Q. You testify now that you did not go there for the purpose of having this copying of original designs denominated an unfair trade practice; is that correct?" A. That I testified? No, I didn't go for that reason. The reason that I went there was——

Q. I did not ask you that. I asked you what you testify to now. You testify that that was not your reason. A. That was not the reason.

Q. No. A. No.

Q. In any event, you went there? A. Yes, sir.

1859

Q. And you went there at a time when the matter of the inclusion in the code of fair competition of such a provision was under discussion? A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. Now, as a matter of fact, you went there with Mr. Hirsch, did you not? A. Not only with Mr. Hirsch——

Q. No, but he—— A. —I did not go with Mr. Hirsch alone. I went to the hearing.

Q. No, I did not say Mr. Hirsch alone, but he was in the party that went with you or that you went with? A. There were others besides Mr. Hirsch there.

Q. Yes, I grant you that. I do not want to clutter up the record with everybody that went there, but in addition to all of those that went there besides Mr. Hirsch, you and Mr. Hirsch went there? A. Yes, sir.

1860

Q. And at this hearing did you give testimony? A. I did not.

Q. You did not testify? A. No, sir.

Q. Did you have a lawyer appear to urge that such a provision should not be included in the Code of Fair Competition? A. We did.

Q. And that lawyer was a Mr. Sheridan, of Hartman, Sheridan & Tekulsky? Was that the name of the firm, Hartman, Sheridan & Tekulsky? It used to be a lot more.

A. Yes, sir.

Q. And he went there as your representative? A. Yes, sir.

Mr. Weisman: I think that is all on that line.

Mr. Haycraft: I move to strike it, Mr. Examiner, it has no probative value on the issues in this case.

Examiner Bennett: Granted.

Mr. Weisman: I may have an exception, your Honor?

Examiner Bennett: Yes, surely.

Mr. Weisman: Thank you.

Examiner Bennett: It is in the record.

Mr. Weisman: Where is Commission's Exhibit 93-A? Oh, here it is.

By Mr. Weisman.

Q. This morning, under direct examination by Mr. Haycraft, I understood you to state that you did business at some time or other with all of the resident buyers appearing on Commission's Exhibit 93-A. A. It is pretty hard to say, there may be some, I don't, and maybe—

Q. No. Did not you say this morning— A. I don't remember.

Q. —that you did business with all of them? A. There may be a few. I have not gone through this very thoroughly to see every one of them, and I cannot remember every one of them on and off; we do business with a certain amount of people, the majority of people we do business—

Q. Mr. Haycraft did not ask you whether you did business with a lot of people or with a majority of people. Mr. Haycraft showed you this list and he asked you to look at it. You understood what he meant, did you not? A. Yes.

Q. And after you looked at it he asked you whether you did business with those people and you first said that you did business with a goodly percentage, or a good percent-

1864

Saul Lieber—For Commission—Cross.

age, I do not know which term you used; subsequently when he asked you what percentage, you looked at it again and you said "With all of them," did you not?

Mr. Haycraft: Practically all.

Mr. Weisman: Practically all?

By Mr. Weisman.

Q. Did you say practically all, or all?

Mr. Haycraft: He said practically all.

1865

Mr. Weisman: Look, that is not nice of you to interject that way, Mr. Haycraft. If you want to testify, I will put you under oath.

Mr. Haycraft: I think it is time that you quoted the witness correctly.

Mr. Weisman: I am.

Mr. Haycraft: From time to time he put words in the witness' mouth, that the witness did not say. If he pays any attention to the testimony going in here he will know better. I do not know whether he does not hear, or is trying to mislead the witness. Anyway, it is my province to object and see that he quotes correctly from the record, so that it is right.

Mr. Weisman: I object to that. I think I would have more pleasure out of the trial if I could not hear some of this, but unfortunately I do hear.

1866

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Weisman: Read the last question.

Q. (Last question read.) A. I do not remember the answer that I have given.

By Mr. Weisman.

Q. Well, look at it now and tell me whether you will say on more careful deliberation that you do business with all of them? A. I do business with part of these here firms, part of the offices mentioned.

Q. Well, what part, that is what we are very anxious to find out. A. I can't just say what part, what percentage; I can't remember every office I do business with; it is impossible for me to remember.

Q. How is it you could remember this morning when Mr. Haycraft asked you, and you cannot remember now? What has happened between this morning and this afternoon that has impaired your memory to so great a degree?

1868

A. Nothing has happened, some names, some names I know we do business with, but I do not know of every one of them. You asked me a question whether I do business with every one. I cannot remember whether I do business with every one. I do business with part.

Q. With what part, would you say, you do business with?

A. It is hard for me at this moment to judge what percentage.

Q. Well, what percentage would you say?

Mr. Haycraft: I object to that. He said it is hard for him to do it.

Mr. Weisman: It was not so hard for him when you were inquiring of him.

Mr. Haycraft: I tried my best to find out from him whether there was anyone named there that he did not do business with, and he said—

1869

Mr. Weisman (interposing): You cannot state that. The record will speak for itself what he said. You know what he said.

Mr. Haycraft: Apparently you know, or don't know.

Mr. Weisman: Oh, I must not answer you at all.

1870

Saul Lieber—For Commission—Cross.

The Witness: I still cannot decide and tell you what percentage of these here concerns we do business with, certain concerns we do business with.

By Mr. Weisman:

Q. Well, "certain concerns" might mean three out of this list. A. I don't know what percentage—I don't know definitely what percentage; I cannot tell you at the present time.

Q. Would you give me any definite number? Look it over carefully and tell me how many, put a check there—

1871

Mr. Weisman: May we put a check against the number he does business with?

Mr. Seidman: Well, I think—

Examiner Bennett: Well, in doing this—I suppose it is a test for the witness' memory.

Mr. Weisman: Not only that, but this morning I will show that when—

Examiner Bennett: I understand. I remember all about this morning.

Mr. Weisman: Yes.

Examiner Bennett: And I cannot see any very great importance in this line of examination.

A. I still can say it is pretty hard for me to point out every name that is on there that I do business with.

1872

By Mr. Weisman:

Q. Would you be willing to say that you do business with more than 50 per cent. of them? A. On and off during the year maybe I do business with 50 per cent., but still and all—

Q. It is questionable? A. I do not know whether I can be definite on that.

Q. That is open to doubt? A. Yes, sir; because, whether I do business with 50 or 60 or 40 per cent., or what—

Q. Did you from time to time receive telegrams from the Guild inviting you to come over there? A. I did.

Q. When you got these returns? A. I did.

Q. Or prior thereto?

Mr. Haycraft: I will ask the witness not to answer until I get an objection in. I object to that question.

Mr. Weisman: The witness cannot read your mind.

Mr. Haycraft: Mr. Examiner, I object to that question on the same ground.

Examiner Bennett: What question?

Mr. Haycraft: It goes into the question of copying and I understood counsel to say he was not going into that. 1874

Examiner Bennett: Read the questions.

(Questions referred to were read.)

Examiner Bennett: You are objecting to that?

Mr. Haycraft: Yes.

Examiner Bennett: Sustained. I don't know that it makes any difference. Off the record.

(There was a discussion off the record.)

Mr. Weisman: Thank you, Mr. Lieber, that is all.

Examiner Bennett: Any redirect examination?

Mr. Haycraft: No redirect.

Examiner Bennett: All right. Thank you very much. 1875

The Witness: Thank you.

(Witness excused.)

Mr. Haycraft: I have another witness if he is here.

1876

Murray Lifshy—For Commission—Direct.

MURRAY LIFSHEY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Mr. Ballou: Mr. Examiner, may I have my appearance noted on the record on behalf of this witness, personally, please?

Examiner Bennett: Certainly; note the appearance.

Direct examination by Mr. Haycraft.

1877 Q. Mr. Lifshy, have you been sworn? A. I have.

Q. What is your name? A. Murray Lifshy.

Q. What is your occupation? A. My occupation is with the Trussel Dress Company, Inc. I have charge of everything in the business pertaining to the selling, shipping, everything with the exception of the direct production.

Q. In what business is that company engaged; that is, what type of dresses? A. At the present time the manufacturing of \$4.75 dresses.

Mr. Weisman: What is the address?

The Witness: 501 Seventh Avenue, New York City.

By Mr. Haycraft.

1878 Q. Where do you sell the dresses that you manufacture?
A. In the City of New York for the resident buying offices, chain store offices, and in our showroom.

Q. Where are your customers located? A. All over the United States. We have some foreign trade, very few.

Q. How do you deliver your dresses to your customers?
A. That is in accordance with the customer's written instructions on his order; some are delivered to a central shipping depot; some are delivered by local carrier, some by railway express. It is in accordance with their written instructions.

Q. Do you have customers in every State of the Union?

A. I believe I have.

Q. What priced dress, wholesale priced dress, do you sell? A. At the present time we are manufacturing \$4.75, \$2.87½.

Q. How long has that been true? A. Well, of the \$4.75—the \$2.87½ price retail has been in existence since May 1 of this year. The \$4.75 started approximately when the N.R.A. came in, there was a short break in 1934 when the price was reduced to \$3.75, and then \$4.75 replaced them.

Q. Before the N.R.A., what priced dresses? A. \$3.75.

Q. Now, the buying offices that you referred to a moment ago, whom do they represent? A. They represent the retailers, department stores, specialty shops.

1880

Q. Located where? A. Throughout the United States.

Q. How are the orders placed with your firm by such buying organizations? A. In every instance they must be confirmed, confirmation from their buying office.

Q. Confirmation, you say? A. Confirmation. Orders are sometimes placed on our order heads, and then eventually we receive a confirmation on their own order head. Orders are quite often placed on their own order head.

Q. Do you have salesmen calling on these buying offices?

A. We have.

Q. Do they call at your place of business? A. Who? The salesmen?

Q. No, the buying offices. A. Yes.

Q. In the sales? A. They do.

1881

Q. Do you have showing of garments? A. Pardon me?

Q. Do you have showings of garments for them to see?

A. What do you mean by showings?

Q. Do you have samples that they can see? A. We have samples displayed, yes.

Q. I show you Commission's Exhibits 93-A and B, and ask you if you will look at them and see whether or not you recognize in that exhibit the names of any of the buying organizations to whom you sell?

1882

Murray Lipshey—For Commission—Direct.

Mr. Weisman: If it will help you any I will concede that he sells to some of them. I hope he does.

A: This list seems to be quite—covering all the resident buyers.

By Mr. Haycraft.

Q. Do you see any names of any resident buyer on there?

A. Yes, quite a few.

Q. With whom you have had some business during the past few years? A. A few.

1883

Q. Will you testify those with whom you have not had business relations during the past three years?

Mr. Weisman: I object to that as immaterial; if it is going to be necessary to prove a lot of negatives here. He is now asking him for those whom he did not have business with.

Mr. Haycraft: The purpose, of course, is to determine from a long list those that he did business with.

Mr. Weisman: I have offered to stipulate with you that he did business with some of them. I assume that is a fact, isn't it?

The Witness: Yes.

Examiner Bennett: Proceed.

1884

Mr. Weisman: I do not think he should be permitted to state anything like that. This is the negative testimony of the type that should not be permitted in any court in my opinion. This witness is now trying to testify to something that he did not do. What possible value can that have? I do not see how you can possibly get along without my stipulation and get your case in at all.

Examiner Bennett: This is not getting us anywhere. Let us have the testimony.

(Question read.)

Mr. Weisman: I object to the form of this question unless it be limited to the period specified in the complaint.

By Mr. Haycraft.

Q. From January, 1932, to April, 1936.

By Mr. Weisman.

Q. If you know as between those particular dates.

Mr. Haycraft: Wait, I am not going to ask him to state any particular dates. I am not limiting him to any particular dates.

1886

Mr. Weisman: I insist that he be limited to those particular dates. Now, you will be sorry that you did not take my stipulation. You cannot prove your case without it.

Mr. Haycraft: Mr. Examiner, I wish you would make counsel remain quiet so that I can conduct an orderly examination of this witness, and not keep on interrupting me every time I ask a question.

Mr. Weisman: If you would ask a proper question you would save yourself a lot of time.

Examiner Bennett: Ask your question.

(Question read.)

Mr. Weisman: I object to the form of the question as not being proper for the witness to testify as to those particular firms without limiting the dates.

1887

Mr. Haycraft: I am asking him to testify to any of these firms beginning with April, 1932, and ending with 1936.

The Witness: Juliet Alexander, L. Browning, Sarah F. Bryan, Bert Cahn, Betty Cohn, Helen Dousseau, Dudley Feit, Gonzalez & Co., Max F. Hexter, Ray Klein, Mabel Max, National Modes, Inc.,

1888

Murray Lifshy—For Commission—Direct.

Edith Newelt, Hazel Oppenheimer, Annie D. Ferling, Regent Shoe Corporation, C. H. Schroth, Michael Senft, Marguerite Swentzel, A. J. Unna, Marguerite Weber, Myrtle Welch.

By Mr. Haycraft.

Q. Those are the names of the concerns whom you did not sell, or to whom you did not sell dresses before or during this period of time? A. What is that?

Q. Those are the names of concerns that you did not sell dresses to during this period of time? A. I have been in this business for 17 years, quite a lot of those names that
1889 are there are familiar to me, and I have picked the names that are absolutely unfamiliar to me to be on the safe side.

Mr. Weisman: I ask that the answer be stricken out. Obviously, instead of answering it, he has given those that he is unfamiliar with over 17 years of dealing when the question addresses itself as to who he did not do business with during this specific period of time.

Examiner Bennett: I will ask him a question or two.

By Examiner Bennett.

Q. To the best of your recollection, are they the persons on that list with whom you did not do any business? A.
1890 They are.

Q. To the best of your recollection you did business with the others? A. The great percentage of them.

Q. The great percentage of them? A. Yes, sir.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. What chain stores have you sold to? A. Grayson's, Lerner's, Zukors, Robinsons, Adair Shops, Rubensteins, Morrisons, Miller-Wohl.

Mr. Weisman: Wait a minute. I want to object. You say, have you sold—I assume that the witness is testifying—your Honor will recall that this witness testified that he has been in business for 17 years. I assume that when you said "Have you sold?" you meant during the same period of time, from January, 1932, to April, 1936. I want to make sure on the record.

The Witness: They are those that I have sold.

Mr. Haycraft: I am perfectly willing to incorporate that in that question.

Mr. Weisman: It is perfectly apparent that it would be useless to outline those that he has sold in the last 17 years.

Mr. Haycraft: Your Honor, I ask that I be allowed to conduct my examination of this witness, without delay. It seems to me that all that counsel for the respondent is trying to do, or that he is seeking to do is to interrupt and to obstruct counsel.

Mr. Weisman: That is highly improper and incorrect. I object to that statement and ask that that be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. Have you finished your answer that you were interrupted in? A. Which ones have I given before?

(Answer read.)

A. Also Lords, J. & N. Also J. & M. H. Samuelson. There may be a few more which do not come to my mind.

1894

Murray Lifshay—For Commission—Direct.

Q. Where are these stores located of these various organizations? A. Throughout the United States.

Q. How long have you been selling them? A. Some of these accounts I have been selling for the past 10 years right up to the present time.

Q. Have you had any business with the Associated Merchandising Corporation? A. Yes, sir.

Q. The stores that they represent? A. Yes, sir.

Q. For how long a period of time? A. Ever since they have been in business. They were at one time the Retail Research Corporation.

1895

Q. Have you ever heard of the Fashion Originators Guild of America, Inc.? A. I have.

Q. When did you first hear of this organization? A. The latter part of 1935.

Q. How did they come to your attention? A. In the form of a stamp on orders I received. Also, through news items in "Women's Wear" and by word of mouth.

Q. Do you have with you a sample of the order that has that stamp on it? A. I have.

Q. I show you Commission's Exhibit No. 306 and ask you if you can identify the stamp on that order, the one that you have in mind? A. Yes, sir.

Q. Is it? A. It is.

1896

Q. To what extent did you observe that that stamp was placed on orders that you received from customers in the fall of 1935? A. The orders that were placed with the large buying offices had that stamp.

Q. Can you name some of the principal buying offices that had that stamp on it? A. Associated Merchandising Corporation, the A. M. C. that you spoke of. Kirby, Block & Fische, Lilienthal—may I look at this list and refresh my mind?

Q. Yes. A. Cavendish Trading Company, Associated Dry Goods Company, Frohman & Altman, and may be others.

Q. Did you have any discussion with any of these buying offices, or any of your customers with respect to the purpose of that stamp and why it was placed on there? A. Well, in the start quite a bit of discussion. I agreed not to accept——

Mr. Weisman (interposing): I object.

By Mr. Weisman.

Q. With whom did you have that discussion? A. With the buyers who placed the order.

Q. When? A. At the time that they placed the order.

Q. Can you give us, at the present time, the approximate date when these discussions took place? A. The latter part of 1935. 1898

Q. Can you give us the month? A. Some time in September or October, I believe.

Q. What was the substance of the discussion that you had with these buyers?

Mr. Weisman: I object to the "substance of the discussions."

Examiner Bennett: Do you have much further examination for this witness?

Mr. Haycraft: I should say about half an hour further on direct.

Examiner Bennett: And will you have some cross for this witness; I suppose you will.

Mr. Weisman: Yes, sir. 1899

Examiner Bennett: It is now 4.40. We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 4.40 o'clock P. M., July 22, 1936, the hearing in the above-entitled matter was adjourned.)

1900

Murray Chesley—For Commission—Direct.

Room 901, 45 Broadway, New York, N. Y.

July 23, 1936.

(Met pursuant to adjournment, 9 A. M.)

Before: JOHN W. BENNETT, *Examiner.*

(Same appearances.)

By Mr. Haycraft.

1901

Q. Do you recall any particular conversation with any particular buyer on this question of the Guild stamp? A. I do.

Q. And with what buyer? A. With Miss Dean of the A. M. C.

Q. When did you have conversations with Miss Dean with respect to the Guild warranty stamp? A. In November, 1935.

Q. Where was the conversation held? A. In the show room of the Trussel Dress Company.

Q. What was the occasion? A. The buyer in question was desirous of placing a group order for distribution to the different stores connected with the A. M. C. At that time I definitely told Miss Dean due to the fact that all orders must contain a warranty stamp I wanted to make it plain and clear that any number that I was cutting on that distribution, because of the quantity involved, I would not take that due to the warranty stamp.

1902

Q. What did Miss Dean say to that? A. Well, several numbers were eliminated from the selection and finally the order was written with that understanding.

Q. Do you recall having a conversation on this same subject with any other buyer? A. I recall having a conversation with quite a number of buyers, too.

Mr. Weisman: I ask the answer be stricken out.

Mr. Hayercraft: Just a moment.

Examiner Bennett: He is trying to relate.

Mr. Weisman: He was asked as to any particular buyer.

Examiner Bennett: As to the conversation. I think the character of the conversation, however, would have to be sustained unless he qualifies it.

Mr. Weisman: Thank you.

By Mr. Hayercraft.

Q. Do you recall the names of any one now you had conversation with? A. I would not definitely on this stand here give any definite names because I am not positive, could not prove it. 1904

Q. I will ask you whether or not—

Examiner Bennett: Go ahead.

Q. I will ask you whether or not as a result of the conversations you had with other buyers you eliminated numbers from your orders?

Mr. Weisman: I object to that general appellation. Of course we cannot meet that type of testimony addressed to the world. How could a respondent meet such testimony, your Honor, in all fairness?

Examiner Bennett: I think that still it is competent testimony, I will overrule your objection. 1905

Mr. Weisman: Exception.

A. As explained in the instance just a short time ago with reference to this order from Miss Dean, I know definitely—

Mr. Weisman: I object to reiteration, your Honor.

1906

Murray Lifshay—For Commission—Direct.

Mr. Haycraft: He is not reiterating.

Mr. Weisman: He told us once about Miss Dean, now he is telling us again.

Mr. Haycraft: Let us not interrupt the witness. Give him a chance to testify.

Mr. Weisman: Will Your Honor hear the first part of the answer? The way he started? Will you read the answer.

(Answer read.)

Mr. Haycraft: You see, you cannot tell. Let him tell.

1907

Examiner Bennett: Yes. All right. That seems to be a specific instance. Go ahead.

A. I know definitely that a certain amount of business was lost in that particular instance. I also know that we always refused to take orders that involved the cutting ticket. That means dresses running into the hundreds, where the other would contain a warranty stamp because we feel we were taking a risk of having the merchandise thrown back at us, and in view of the loss that could be involved, rather than antagonize our buyer we refuse to take orders, in large quantities, with the warrant stamp on them.

By Mr. Haycraft.

1908

Q. Now, then, as a matter of fact, did you have garments returned on account of the Guild warranty on orders of the Guild? A. We did.

Q. Can you testify as to when such returns took place?

A. The very last one took place on June 24, 1936. That is only a few weeks ago. They have taken place quite a lot the latter part of 1935. I cannot give you exact dates there.

Q. Well, can you get close enough to the exact dates to state the months the returns took place? A. Somewhere the last few months in 1935.

Q. Do you keep any record of the returns from customers on the ground, or because the garments were alleged to be copies of Guild dresses? A. We don't.

Q. Have you taken from your files some correspondence from customers relating to this subject matter? A. I have.

(A paper was marked for identification Commission's Exhibit 331 for Identification.)

Mr. Weisman: Mr. Haycraft, I do not think you know it, but some of your witnesses are in the room.

Mr. Haycraft: Not of this group.

Mr. Weisman: I do not care what the group is, they are going to testify as to the same thing; Mr. Examiner. Mr. Examiner, I have called the attention of Mr. Haycraft to the fact contrary to your Honor's ruling that a lot of these witnesses are present in the room.

1910

Examiner Bennett: If you are going to call them, I think you should find a place for them outside of the room.

Mr. Haycraft: I thought the rule referred to the members of the \$4.75 Group Association.

Examiner Bennett: If you are not going to call them—

Mr. Haycraft: I do not know whether I will call them. I want to get through with this witness.

Examiner Bennett: You are going to call some of these witnesses tomorrow, are you not?

1911

Mr. Haycraft: This same Association.

Mr. Weisman: This testimony is as to all the same matter, the Association—

Examiner Bennett: If they testify on this general line, I think we should exclude them if you intend to call them.

Mr. Haycraft: Do you want me to do that, or will you do that?

1912

Murray Lifshay—For Commission—Direct.

Examiner Bennett: You better do it; I don't know who they are.

Mr. Haycraft: I do not know myself.

Mr. Weisman: Well, make the general observation.

Examiner Bennett: You can ask them.

Mr. Haycraft: The Examiner has instructed that any manufacturers who are in the courtroom under subpoena and expect to testify will please retire to the anteroom outside and wait outside for further instructions.

(Thereupon, a group of witnesses left the room.)

1913

Mr. Weisman: It looks like we had quite a few, Judge.

Examiner Bennett: Yes, I think it is a fair request where there are facilities to make them comfortable.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 331, for Identification, which purports to be an original letter from the Kaufmann's Department Store, Pittsburgh, Pa., dated October 9, 1935, and ask you if you received that letter in the ordinary course of business? A. We did.

Examiner Bennett: 331?

Mr. Haycraft: 331.

1914

Examiner Bennett: All right.

Mr. Haycraft: I offer that in evidence, Mr. Examiner.

Examiner Bennett: Received.

(Letter referred to was marked Commission's Exhibit 331, and received in evidence.)

Mr. Weisman: Well, I have not seen it, yet.

Examiner Bennett: Just a moment. Go ahead and examine it.

Mr. Weisman: This is the same kind of exhibit as your Honor has heretofore admitted in evidence over my objection commencing with Commission's Exhibit 307, and I object upon the same grounds, to wit, that the letter may not be received in evidence unless it is properly authenticated; furthermore, that there is no proof of the statements therein contained, and is incompetent for that reason, being clearly hearsay.

Examiner Bennett: You have interrogated the witness on this?

Mr. Haycraft: I will further on, on some points, if you wish me to. I have interrogated him that he received it in the ordinary course of business. I will ask him further, then,—before you rule.

1916

By Mr. Haycraft.

Q. I will ask you further whether or not the dresses described in this letter were actually returned to you? A. They were.

Mr. Haycraft: I can ask him further, but I did not want to ask him further about the exhibit until it is in evidence, Mr. Examiner.

Examiner Bennett: Yes. Well, I will overrule your objection.

Mr. Weisman: Exception.

Examiner Bennett: And it may be received; you may have your exception.

1917

By Mr. Haycraft.

Q. Do you have any recollection as to what transpired further with respect to this return of garments as described in Commission's Exhibit 331?

Mr. Weisman: I object to the form of that question, what transpired further with regard to the

1918

Murray Lifshy—For Commission—Direct.

return. It opens up the door for this witness to ramble all over the lot and say anything he pleases. It is wholly incompetent, irrelevant, and immaterial, unless some specific avenue is approached.

Examiner Bennett: Ask him if anything further occurred.

Mr. Haycraft: I am asking him for a recollection, first.

Examiner Bennett: How?

Mr. Haycraft: I am asking him for a recollection, Mr. Examiner; purely a foundation question.

Examiner Bennett: What is the question?

1919

• (Question read.)

Examiner Bennett: All right. You may answer that question.

A. We took the dresses—

Mr. Weisman (interposing): No, no.

Mr. Haycraft: No. That question can be answered "yes" or "no."

Examiner Bennett: I ask you whether or not you did.

The Witness: Yes.

By Mr. Haycraft.

1920 Q. What did you do with the garments that were returned? A. Credited the account in question with the return, put the garments back in stock.

Q. Did you sell any more of that number to that customer? A. To that particular customer?

Q. Yes.

Mr. Weisman: Objected to.

A. No.

Mr. Weisman: Objected to as incompetent, irrelevant, and immaterial.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Do you have any independent recollection of that number, whether it was a popular number or not?

Mr. Weisman: Objected to as incompetent, irrelevant, and immaterial, calling for a conclusion of the witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I have not.

Mr. Weisman: Ha, ha.

Mr. Haycraft: Be sure you get the laugh. You got mine the other day.

Mr. Weisman: Did you get that laugh?

The Reporter: Yes, I think I did.

Mr. Weisman: Is that part of this examination? I ask that that remark be stricken from the record.

Examiner Bennett: It may be.

Mr. Weisman: And I want to ask of the Reporter that it not appear in the record at all.

Examiner Bennett: Well, I cannot do that.

By Mr. Haycraft.

Q. Did you get in touch with Mr. Jack Goldstein of the Fashion Originators Guild of America with respect to these dresses? A. I did not.

(Two papers were thereupon marked for identification Commission's Exhibits 332 and 333.)

Examiner Bennett: Is that 332 and 333?

Mr. Haycraft: Yes.

1924

*Murray Lifshy—For Commission—Direct.**By Mr. Haycraft.*

Q. Will you state why you accepted, the return of the garments from the Kaufmann Department Store, as described in Commission's Exhibit 331? A. The return in question of seven dresses?

Q. Yes. A. Amounting to about \$33?

Q. Why did you? A. I felt that it was not well to antagonize the buyer, and, anyway, rather than do that, I took them back.

Q. Why did you think that that would antagonize the buyer?

1925

Mr. Weisman: I object to the question as immaterial, incompetent, no proof here.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: He may answer.

A. I know because of my relationship to the business and the setup, and the relationship of buyers and their merchandise managers where they have instructions to return a garment, it is their business, their job, to see that they are returned. If they do not receive my cooperation, or any communication with reference to them coming to the office, any trouble with the same comes back directly to the buyer, and as a result on the next trip to New York City they shy away from you.

1926

By Mr. Haycraft.

Q. Was this Kaufmann Department Store a substantial customer or otherwise?

Mr. Weisman: I object to the form of that question.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. As far as my particular business is concerned, although they are a big store, we do a nominal amount of business with them.

Q. Do you know who their business is? Are they a member of the A. M. C.? A. No, they are not.

Q. Who is it?

Mr. Weisman: I ask that the question be answered.

(Last answer read.)

The Witness: I said no.

Mr. Weisman: I thought you said no, as to whether they were a member of the A. M. C.

The Witness: I said no, they are not.

1928

By Mr. Haycraft.

Q. I show you Commission's Exhibits 332 and 333, 332 being a letter from the Jones Store, Kansas City, Mo., to your firm, dated October 26, 1935, and ask you if you received that original letter in the usual course of business from the Jones Store? A. We did.

Q. Directing your attention to Commission's Exhibit 333, being a carbon copy of a letter from you to the Jones Store, I will ask you if that is not a carbon copy of a letter mailed by you to the Jones Store on October 30, 1935, in answer to a letter, just identified as Commission's Exhibit 332? A. It is. I dictated it.

Q. I will ask you now whether you received the goods described in Commission's Exhibit 332? 1929

Mr. Weisman: I object to the witness testifying to anything concerning a document that is not yet in evidence.

Mr. Haycraft: That is rather novel, when I am trying to further identify it.

Mr. Weisman: It may be novel to you—

Mr. Haycraft: Mr. Examiner—

1930

Murray Lifshy—For Commission—Direct.

Mr. Weisman: But it is not novel to anybody that understands the rules of evidence. I submit showing him a paper and saying, "Did you receive the goods described in this paper," and the paper is not before the Court, and nobody knows what it is—I am sorry for you if that is novel, Mr. Haycraft.

Mr. Haycraft: Mr. Examiner, do I have to be interrupted before I make my statement? It is a constantly recurring practice in this proceeding.

Mr. Weisman: Well, you know—

Mr. Haycraft: There it goes again.

Examiner Bennett: No, no.

1931

Mr. Haycraft: Let me finish my statement.

Examiner Bennett: Please keep that gentleman's agreement you were so religious about keeping.

Mr. Haycraft: The point is this, Mr. Examiner, as you well know, and as Counsel for respondent well knows, as a foundation question before this Examiner wishes to rule on this letter, I want to find out whether or not there is an actual transaction. This refers to an actual return of goods.

Examiner Bennett: All right.

Mr. Weisman (interposing): I—

Mr. Haycraft: The Examiner himself prompted the question, on previous occasions.

Examiner Bennett: Yes.

1932

Mr. Haycraft: I am merely doing it now to pave the way for the admission of the exhibit.

Examiner Bennett: I am going to overrule your objection.

Mr. Weisman: Exception.

Examiner Bennett: I think it is entirely within the witness' knowledge.

Murray Lipshey—For Commission—Direct.

1933

By Mr. Haycraft.

Q. You may answer. A. We did.

Q. My question is whether the goods were returned. A. They were returned; yes, sir.

Mr. Weisman: I object to the reference to this in relation—

Examiner Bennett: Documentary evidence is not the best evidence of that sort of thing.

Mr. Haycraft: I offer the two letters in evidence, Commission's Exhibits 332 and 333.

Mr. Weisman: Same objection as to Commission's Exhibit 331.

Examiner Bennett: Overruled. Received in evidence, that is Commission's Exhibits 332 and 333.

1934

(The documents referred to, heretofore marked for identification Commission's Exhibits 332 and 333, were marked as exhibits and received in evidence.)

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. I will ask you whether or not you accepted the return of dresses as indicated on this Commission's Exhibits 332 and 333? A. We did not.

Q. What was the reason for not accepting them? A. The reasons are outlined in the letter offered as an exhibit.

1935

Mr. Weisman: I ask that the answer be stricken out.

Q. That is Commission's Exhibit 333? A. That is Commission's Exhibit 333.

1936

Murray Lipshey—For Commission—Direct.

Mr. Weisman: —and that the witness be directed to answer—

Mr. Haycraft: The witness has answered, Mr. Examiner.

Mr. Weisman: Oh, he has not answered.

Examiner Bennett: I will let him answer specifically. If you want to refresh your recollection from the letter you may do so.

Mr. Haycraft: Very well. (Handing to the witness Exhibits 332 and 333.)

By Mr. Haycraft.

1937 Q Refreshing your recollection from the letter, will you testify as to the reasons for not accepting the return? A. The merchandise in question had been shipped ten weeks prior to the receipt of the original letter from the Jones Company advising us of the return. We felt that it was rubbing it in a bit too heavy.

Q. I show you Commission's Exhibit 334 for Identification, an original letter from John Wanamaker, Philadelphia, under date of November 8, 1935, and ask you if you received that original letter? A. I did.

(Letter from John Wanamaker, Philadelphia, under date of November 8, 1935, was marked for identification Commission's Exhibit 334.)

1938 Q. In the ordinary course of business? A. Yes.

Q. Were the eight dresses described therein returned?

A. They were.

Q By the John Wanamaker Company? A. They were.

Mr. Haycraft: I offer that in evidence, Commission's Exhibit 334.

Mr. Weisman: Same objection as was made to Commission's Exhibit 333, no proof of the truth of any statement therein contained.

Murray Lifshay—For Commission—Direct.

1939

Examiner Bennett: Overruled. Received as Commission's Exhibit 334.

Mr. Weisman: Exception.

(The document referred to, heretofore marked for identification Commission's Exhibit 334, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Did you accept this return? A. We did.

Q. For what reason? A. Wanamaker Company an excellent account on our books. The return in question amounted to \$38. There was no need of throwing any sand, or any friction, in our business relationship. We accepted the return and credited the account with the amount.

1940

Q. Did you continue to sell that number to Wanamaker?

A. No, sir.

Q. Do you have any recollection as to whether or not it was a popular number? A. 215 is—

Mr. Weisman: I object.

A. 252—

Mr. Weisman: Calls for a conclusion of the witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

1941

Examiner Bennett: Granted. He may answer.

A. 252 was a running number.

Mr. Weisman: I ask that the answer be stricken out as not responsive.

Mr. Haycraft: We will find out.

Examiner Bennett: Is that the number referred to?

1942

Murray Lifshy—For Commission—Direct.

Mr. Haycraft: 252, he said, was a running number.

By Mr. Haycraft.

Q. What do you mean by—

Mr. Haycraft: Pardon me. I will wait for a ruling.

Examiner Bennett: Well, I don't know that it is answered or not. I do not understand that.

Mr. Haycraft: I am going to ask him for an explanation, Mr. Examiner.

1943

Examiner Bennett: I do not know what a running number is.

By Mr. Haycraft.

Q. What do you mean by "running number"? A. "Running number" is a term we apply to a dress that is re-cut and re-orders from different sources come in, different retailers.

Examiner Bennett: Well, then, was it a popular number, or was it not?

The Witness: It was a popular number.

Examiner Bennett: Yes.

The Witness: With us.

Examiner Bennett: All right. That is English.

1944

By Mr. Haycraft.

Q. Do you have any independent recollection of what would be the normal re-order on that dress?

Mr. Weisman: I object to that question. Calling for a conclusion of the witness. There is no such thing. The Court will take judicial notice there is no such thing in this business as normal re-orders. It is a style business. It is affected by what—

Mr. Haycraft (interposing): Are you testifying?

Mr. Weisman: It is affected by annual—

No, the Court has, I think, a knowledge of what this business is, and to say what is "normal re-order" on a dress is just calling for a conclusion of this witness and a guess.

Examiner Bennett: Well, I will sustain the objection to further questioning along the lines suggested.

By Mr. Haycraft.

Q. Do you know how many dresses of that number you sold? A. To Wanamaker, twelve. 1946

Q. Do you know how many you sold to your other customers?

Mr. Weisman: Objected to as immaterial and incompetent, piling speculation upon speculation. The fact he sold it to some other customers in Vermont or some other city would be no proof of what customers in New York or Philadelphia might require, the type of stores, and so forth.

This is a company that is a large company, has an infinite number of customers, and some buy a lot, some buy a little, some buy a lot of some number, and some buy a little of some number.

I assume that the Court will take judicial notice of the fact that such a question is highly improper. 1947

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Well, that is very specific. Do you know it?

Objection overruled.

Mr. Weisman: Exception.

(Question again read.)

1948.

Murray Lipshey—For Commission—Direct.

A. I know that this particular number as cut in large quantity. When I say "large quantities" I mean in figures running above 500 and over. To say exactly how many were cut and sold I could not.

Mr. Weisman: I ask that the answer be stricken out, except that he does not know, in the latter part; how many were sold. "I don't know" is the answer to the question.

Mr. Haycraft: I object to that.

Examiner Bennett: Well, I will let it stand.

Mr. Weisman: Exception.

Examiner Bennett: He has given a number, 500.

1949

By Mr. Haycraft.

Q. I show you Commission's Exhibit 335 for Identification, an original letter from the respondent, Fashion Originators Guild of America, Inc., dated June 24, 1936, and ask you if you received that letter? A. I did.

(Letter from Fashion Originators Guild of America, Inc., under date of June 24, 1936, was marked for identification Commission's Exhibit 335.)

Q. Were the garments described therein returned to you? A. They were.

1950

Q. How many were there, do you remember? A. I believe there were seven.

Mr. Haycraft: I offer the letter in evidence as Commission's Exhibit 335.

Mr. Weisman: May I see it? No objection to that, Judge.

Examiner Bennett: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 335, was marked as an exhibit and received in evidence.)

Murray Lifshy—For Commission—Direct.

1951

By Mr. Haycraft.

Q. Do you recall how many stores you were selling that garment to in Pittsburgh, that style of garment? A. No, I don't.

Q. Do you recall any of the stores that you were selling that garment to in Pittsburgh? A. I don't, with the exception of the fact that certain chain stores may have had branches in the town, the City of Pittsburgh. I would not know because of the distributing from the New York shipping point. I don't at this particular moment recall a particular account that had that particular style.

Q. Is it possible for you to determine that by consulting your records? A. It is.

1952

Q. I would like to have you do that. Could that be done over the telephone or would you have to go to your own office to do that? A. Well, I think I can get it between the hours of twelve and two.

Q. All right. Are these all of the instances where you have had returns of garments pursuant to the direction of the Guild? A. They are not—

Mr. Weisman: I ask that that question be limited. He does not know whether they were returned pursuant to the direction of this Guild, and this is no evidence of that type of transaction. It is purely hearsay. He has not testified in a single instance that he had any personal knowledge of any return of any garment by the direction of the Guild.

1953

Mr. Haycraft: I will amend the question.

By Mr. Haycraft.

Q. As you understood, they were returned by the direction of the Guild?

Mr. Weisman: I object to that question as incompetent, irrelevant and immaterial, what he under-

1954

Murray Lifshy—For Commission—Direct.

stood. We are here to present the facts of this fact, I believe, not to have this witness' understanding.

Examiner Bennett: Well, I will sustain the objection in that form. It is indefinite.

The Witness: May I answer?

Mr. Weisman: No, the Court has ruled you may not.

Examiner Bennett: Sustained in that form, Mr. Haycraft.

By Mr. Haycraft.

1955

Q. Mr. Lifshy, are these all the instances where garments have been returned by retail dealers for the alleged reasons that they were copies of dresses designed or styled by the members of the Fashion Originators Guild of America? A. Those are not the only instances; there are others.

Q. Can you testify at the present time as to the number of other instances? A. In figures, I cannot. All I can state, that there were quite a large number of instances of returns.

Q. And when? A. During the months of October and November, 1935, especially, and right up to the present date.

1956

Q. Now, what effect has this practice of returning of dresses for the alleged reason that they were copies of dresses manufactured and designed by members of the Fashion Originators Guild of America had upon that business?

Mr. Weisman: I object to the question as incompetent, irrelevant and immaterial, no statement as to any fact, but as to a conclusion of this witness, no opportunity thereby given to cross-examine or elicit the truth or falsity of the conclusion as al-

leged. We should have some facts in this case, your Honor, I respectfully submit.

Mr. Haycraft: Plenty of opportunity.

Mr. Weisman: No, no, not in a question like that, like opening up the window and shooting out of the window and trying to hit a bird. You have got to have something to hit at.

Mr. Haycraft: This witness, Mr. Examiner, is an official of this concern and he is in position to testify. He has had practice—

Mr. Weisman (interposing): That is not proper testimony in that form.

Mr. Haycraft: I submit it is on that point.

Examiner Bennett: You can lay a little further foundation, if you will.

By Examiner Bennett.

Q. Did it have any effect upon your business? A. It did to the extent that we could not—rather, we would not accept any order in a quantity lot with the Guild stamp on.

Examiner Bennett: Yes. Well, of course, the answer given is not responsive to the Examiner's question and may be stricken out. Go ahead with your examination, Mr. Haycraft. I just simply wanted to ask that preliminary question.

Mr. Haycraft: Did you sustain the objection to my last question when I asked what the effect was?

Examiner Bennett: Yes. You asked what effect, did you not?

Mr. Haycraft: Yes.

Examiner Bennett: All right. Go ahead and answer that question. Overruled.

1960

*Murray Lifshay—For Commission—Direct.**By Mr. Haycraft.*

Q. Now will you testify as to what effect it had upon your business?

Mr. Weisman: Exception.

1961

A. The effect of losing orders in a large quantity had on certain particular numbers that we as a matter of business felt was not desirable, with the probability of a lot being returned because of the Guild reason. At that time a large lot would involve a large loss. The profit end of these transactions usually is small and we did not care to take the risk of perhaps losing an account for the small amount involved. We would pass up that order and let it go by the board.

Q. What was the effect of the returns themselves upon future business with the customers who made the returns on those particular numbers that were returned? A. Well, Guild reasons became a popular reason for return.

1962

Mr. Weisman: I object to that and ask to have the answer stricken out, and I object to the form of the question. He asked what was the effect. As I recall the question—I may be in error—the question was what was the effect with regard to the particular number when a return was received. It is perfectly obvious that if the customer returned it once they were not going to ship it again to them. It is merely a reiteration or an attempt to emphasize the testimony already given, your Honor.

Examiner Bennett: Well, I will sustain the objection and ask you to make that more specific, if you will.

Mr. Haycraft: Well—

Examiner Bennett: If you are asking about—if you want to know how it affected the good will.

why, ask about the good will. If you want to know how it affected other things, ask about them specifically, if you will.

By Mr. Haycraft.

Q. Mr. Lifshy, you have testified that with respect to No. 252, that you were selling to the Wanamaker Company, that you were unable to sell more of that number to them?

A. Yes, sir.

Q. You also testified with respect to No. 217, which you were selling to the Kaufman Stores. Do you recall that testimony? A. I do.

Q. Now, with respect to the other returns, other than those which have been identified here in this proceeding, I will ask you whether or not your testimony would be the same as to the sale of the return numbers, further sale of the return numbers to those particular stores? A. Well, naturally, I would not ship the same number to that particular store after they had made a return on a dress, regardless if they wanted it or not. There have been instances where numbers were returned by particular stores due to Guild reasons that were considered our best running numbers. The buyer was reluctant to return them, but she was instructed to do so and had to do so—

Mr. Weisman (interposing): Just a moment. I ask that be stricken out, "the buyer was reluctant to return them, but she was instructed to do so." The witness does not know.

Mr. Haycraft: I will agree that may be stricken out, what she was instructed to do, but he can certainly observe the reluctance.

Mr. Weisman: He did not observe it or see it.

Mr. Haycraft: I do not agree with that.

Mr. Weisman: Reluctancy is something you might observe and someone else might not observe; it calls for a conclusion of the witness.

1966

Murray Lifshy—For Commission—Direct.

Mr. Haycraft: It is still evidence.

Mr. Weisman: I submit it is not evidence, your Honor.

Examiner Bennett: Denied. You may go ahead and finish your answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Have you finished your statement? A. I have.

Q. Finish your statement.

(Last answer read.)

1967

A. But I know—

Mr. Weisman (interposing): Did your Honor rule that that might stand?

Examiner Bennett: Yes.

Mr. Weisman: Exception.

Examiner Bennett: Deny your motion to strike.

Mr. Weisman: Exception.

A. But I know several particular instances where return of this number resulted in an reorder business—loss of reorder business to me on that particular number to that particular account.

By Mr. Haycraft.

1968

Q. I believe I forgot to ask you, Mr. Lifshy, as to the percentage of your customers who insisted on placing the Guild warranty stamps on their orders.

Mr. Weisman: I object to that unless a foundation will be laid to show that this witness knows about it.

Examiner Bennett: All right. You may lay a foundation. Find out whether he knows whether he has or not.

By Mr. Haycraft.

Q. Do you know, have you any knowledge, as to the number of customers, retail dealers, who insisted on putting the Guild warranty stamp— A. (Interposing) I have.

Q. —on their orders? A. I have.

Q. What percentage of your total number of customers have done so? A. As I understand, you want percentage of customers not in relation to volume of business, but customers—am I right?

Q. That was my first question, yes. A. At least 60 per cent. of my business insisted upon placing orders with the Guild stamp on.

Q. What percentage of your volume would that be? A. 1970
That would be approximately 40 per cent. of my volume.

Mr. Haycraft: That is all.

Cross-examination by Mr. Weisman.

Q. Mr. Lifshy—is that the way you pronounce your name? A. Correct.

Q. In your testimony you have used, from time to time, the word "buyer"— A. The word—

Q. "Buyer." A. "Buyer," yes.

Q. Now, when you used the word "buyer," did you mean the person who was employed by the store itself to actually do the buying? Is that whom you meant? A. No, I mean the person who comes in my showroom and places the order. 1971

Q. That is right. A. He may be employed by the store; he may be employed by the New York office.

Q. Yes. A. Resident buyer or the store buyer.

Q. Yes, that is what I want to find out. In other words, these buyers are a definite sort of professional class known in the retail industry? A. Right.

Q. A store would have a great number of buyers. A. For the various departments?

1972

Murray Lifshy—For Commission—Cross.

Q. Departments. A. Yes.

Q. And these buyers are in turn responsible to the so-called merchandising heads of the departments in which they work? A. Right.

Q. And the merchandising heads of the stores are in turn answerable to the executives? A. Right.

Q. When you use the word "buyer," as, for example, you say a buyer may be reluctant, you mean the person who is employed to do the buying, whether it be a representative of a resident buying office or whether it be one operating under the direction of the merchandising head?

1973

A. In that particular instance that you refer to there I meant the buyer of that particular—of a particular store who was directly responsible for her particular department.

Q. Yes. And she was in charge of buying for that particular department? A. Right.

Q. But she was not an executive of the store?

Mr. Haycraft: I object unless he knows.

By Mr. Weisman.

Q. Was she? A. Well, I would not label them, because some stores may feel that their buyers are executives inasmuch as they have charge of their departments. Some stores may not. To put a label on them, I would not dare do it.

1974

Q. Do you not know that it is a fact that there is a definite class of people who have a particular sense of style values and merchandise values who are known as buyers in the industry? A. Plus those values that you state, the essential value is the ability to merchandise—merchandise, to buy.

Q. Yes, these buyers frequently are employed one season in one store, or two seasons, then go from store to store, as they get better positions and bigger positions? A. It

has been my experience that good buyers remain with their stores a very long time. I know some that have been connected with the same store for the past sixteen years.

Q. Well, if a buyer is a good buyer, do not other stores seek to obtain the services of that good buyer frequently?

A. Something I know nothing about.

Q. Nothing at all? A. No, sir.

Q. Never discussed that with buyers? A. I never did.

Q. Never had buyers tell you of offers that had been made to them? A. In the course of conversation we may have had talk about offers being made to them. I would not say definitely that was a practice, or—no more than it is in any other business or any other field of endeavor.

Q. Well, would you deny that these buyers are a class of people in the retail business usually separate and distinct from the management of the retail business, as, for example, a salesman for a manufacturing business is separate and distinct from the people who own and control the business?

Mr. Haycraft: I object to that question; not proper cross-examination. It is irrelevant and immaterial and no foundation laid to show he had any knowledge. He said he had not, your Honor.

Mr. Weisman: I think that is not correct. He comes in contact with these people. Twenty-eight years, he ought to know.

The Witness: Seventeen years.

Mr. Weisman: Seventeen years?

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: It also assumes a fact, Mr. Examiner, that is not important, as I understand it.

Examiner Bennett: I do not just get—

Mr. Haycraft: Whether buyers are executives.

Examiner Bennett: I do not know just what you expect to bring out by that sort of inquiry.

1978

Murray Lifshay—For Commission—Cross.

Mr. Weisman: I will tell your Honor. There has been much testimony by this witness of this talk with buyers and so forth. I think it will illuminate the record to show what these buyers are. I mean, I think that is part of my job. I do not think it particularly helps or hurts me, but one should know and the record should disclose what these buyers are. We all know what buyers are, but the word standing alone in the record might be confused or synonymous with the legal term "a buyer," as a seller and so forth.

1979

Examiner Bennett: Well, I will let him answer. I do not believe it will do any harm.

By Mr. Weisman.

1980

Q. Will you answer the question? A. It is hard to mark a definite line of distinction as to the relationship between a buyer and a store, the particular store they work in. It has been my experience that buyers are given figures to meet, or usually have figures to meet, based on previous years' sales. Their job is to go out and buy the merchandise, run their department, make an effort to meet these figures, exceed them if possible, keep their mark-downs below a certain minimum, see to their merchandise, display their merchandise, fight for space on the advertising page, and it is rather hard to state where their executive authority stops and where the stores start, and so on.

Q. You say they are given figures. Who gives them these figures? A. Usually come down from the store office, I believe.

Examiner Bennett: I am going to interpose a question there.

To what extent do you find that heads of departments in retail stores are the buyers for their department, or do you find that to exist?

The Witness: Well, the buyer is usually the head of her particular department; it may be the budget shop, where they sell a certain priced dress. Another buyer may have another department; say, the house dress department in a certain price range. All these buyers in a group answer to a merchandise manager of that group of departments.

Examiner Bennett: I see. All right.

By Mr. Weisman.

Q. Who does the merchandise manager answer to? A. General merchandise manager, perhaps, of the store.

Q. General? A. I mean it all depends upon the setup of that particular store. 1982

Q. Well, in a setup such as you have just given us. A. In a big department store, where there are a number of departments, it has been my observation you have the buyer; the buyer, in turn, answers to the merchandise manager of her department, who may also merchandise or be manager of several other departments. He, in turn, answers to the general merchandise manager of the store, who, in turn, answers to the executives or board or whoever may be in charge.

Q. Let us take, for example, John Wanamaker of Philadelphia. A. Yes.

Mr. Haycraft: Your Honor, I have an objection to all of this line of cross-examination. 1983

By Mr. Weisman.

Q. By Commission's Exhibit 334. Who is the buyer for that store? A. Miss Cosgrove.

Q. Miss Cosgrove? A. That is department 509, that particular department in the store.

Q. You mean that that store has 509—more than 509 departments? A. Oh, I don't know. That is, that may start with a hundred, they may start with 300.

1984

Murray Lifshy—For Commission—Cross.

Q. How many departments would you think they have in a store like John Wanamaker's? A. I would not even try to guess.

Mr. Haycraft: May I object?

Examiner Bennett: Sustained. I think we are going farther than we—

By Mr. Weisman.

Q. Was this buyer an executive of John Wanamaker?

Mr. Haycraft: If you know.

1985

A. In a sense of the word she managed her particular department, yes.

Q. Do you know whether or not she in anywise had anything to do with the policy—whether she directed the policy of John Wanamaker of Philadelphia? A. I cannot state.

Q. You would be very much surprised if that were a fact, would you not? A. I would not.

Q. You would not? A. No.

1986

Q. You think that Miss Cosgrove is one of those who fixes the policy, the merchandising policy, of John Wanamaker of Philadelphia? A. No, I don't say that she is one of those that fixes the merchandising policy of John Wanamaker, but I do say that when a certain buyer has been connected with a particular store for a great number of years her opinion on a merchandising policy of that particular store and pertaining to her department has some weight.

Q. I agree with you. Who is that opinion submitted to? Her superior? A. I would estimate to the superintendent or at a conference.

Q. Don't you know from your experience who decides whether or not that opinion is a good or bad one? A. No, I don't.

Q. You don't know that that is put up to the merchandise manager of the store? A. You mean her opinion?

Q: Yes. A. It may be passed on to the merchandise manager of the store; it may be passed on to the general merchandise manager of the store. It is a hypothetical question. I cannot just say "yes" to something that I do not definitely know.

Mr. Haycraft: Your Honor, I move to strike out all this testimony on this point, that I objected to, in order to keep the record straight.

Examiner Bennett: Well, I will sustain the objection because I do not see that it is getting us anywhere.

1988

Mr. Haycraft: I move to strike the testimony.

Examiner Bennett: Well, I will let it stand as far as it has gone.

Mr. Haycraft: I understood, Mr. Examiner, you were granting—allowing the witness to testify. I have been repeating my objections right along. I did not know you had sustained them.

Mr. Weisman: He has not before.

Examiner Bennett: I sustained the objection to going any further.

Mr. Haycraft: Oh, I see.

Examiner Bennett: On the setup of department stores. The knowledge is more or less secondary and I do not see that it has any bearing on the issues.

1989

Mr. Weisman: In view of your Honor's ruling, I will not pursue the inquiry any further.

Examiner Bennett: All right.

By Mr. Weisman.

Q. How many customers would you say the Trussel Dress Company has? A. Before I answer that I prefer a definition, or what you mean by the word "customers."

1990

Murray Lifshy—For Commission—Cross.

As I stated in my previous testimony, we have been in business seventeen years. Any account in our books would be called a customer of the Trussel Dress Company. In that respect it runs quite up to 10,000, but I would say that active accounts on our ledgers of about 2,000.

Q. Why did not you give Mr. Haycraft such an explanation when he asked you—used the same word, “customers,” and you answered him right away?

Mr. Haycraft: Objected to.

A. When Mr. Haycraft—

1991

Mr. Haycraft: Mr. Examiner, just a moment. This answer was certainly fair—

Mr. Weisman: Certainly.

Mr. Haycraft: Warranted to be full, and I do not think it should be subject to the type of question that has just been propounded, because this witness certainly has been attempting to answer all these questions in a fair and full manner, and I certainly object to the form of that last question.

Mr. Weisman: I object to my friend's speeches and characterizations, which he must know are highly improper, and ask that he be requested to refrain therefrom.

1992

You won't add anything to the weight of your witness' testimony by trying to build him up by your speeches, and I object to it, your Honor. It is not nice, to say the least.

Mr. Haycraft: I am willing for the Examiner to rule on my objection.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Read the objection and read the answer.

(The objection of Mr. Haycraft was read.)

Mr. Weisman: I also object—

Examiner Bennett: Well, go ahead and answer. You can give the reason.

A. When Mr. Haycraft asked me that question, in my mind he definitely fixed the period involved there, at the time when the Guild's activities—or the latter part of 1935. In view of the fact that you are cross-examining me, I do not care to leave any doubt as to what I mean when I make my answers. When you asked me customers, I would like to know what customers you refer to. I understood what customers Mr. Haycraft referred to; I did not when you asked me the question.

1994

By Mr. Weisman.

Q. Well, now, you know what customers I am now referring to? A. I don't.

Q. I am referring to the number of customers you have on your books during the period commencing August, 1935, and down to date. A. I would say active accounts, around 2,000.

Q. What do you mean by active accounts? A. Well, I eliminate certain types of accounts that every dress house gets at certain spells. It may be that as a particular cloth that is desirable in dresses, because of their popularity of that cloth, delivery of the dresses in that cloth is rather hard to secure for the retailer; we then have a tendency of getting an influx of accounts that come in to buy that particular dress, and out when they receive it. They are not a regular account; sort of a transient trade, you may call it.

1995

Q. In other words, when you used the words "active account," that is synonymous with the words "regular account"? A. Well, it means an account that we do business with at least once over a period of every two months, I would call an active account; some more, some every day—at least once every sixty days.

1996

Murray Lifshy—For Commission—Cross.

Q. So during the period before stated you have accounts on your books to the number of about 2,000? A. Right.

Q. To whom you have shipped merchandise at least once during this period? A. Right.

Mr. Haycraft: He nodded his head.

By Mr. Weisman.

Q. You said "Yes"? A. Right.

Q. Now, how many accounts of such nature would you say that you had on your books for the period August, 1934, to August, 1935?

1997

Mr. Haycraft: That is objected to as not proper cross-examination.

Examiner Bennett: If he remembers, he may answer.

A. Approximately the same.

By Mr. Weisman.

Q. Did you, before you came to court, go over this list of 2,000 accounts? A. No.

Q. Did you before you came to court go over the orders that you have received during the past, during that period, August, 1935, to date, to determine how many of them had the Guild stamp? A. No.

1998

Q. How many salesmen have you in your business? A. Four.

Q. And these people all take orders? A. Salesmen?

Q. Yes. A. Yes.

Q. And they all receive orders? A. Yes, sometimes.

Q. And you said the volume of your business, you estimated that 60 per cent. of the customers used the Guild stamp? A. Correct.

Q. That was an estimate? A. It was.

Q. And in fixing that estimate you did not go over the list of customers and you did not go over the orders?

A. No.

Q. And you said that this amounted to about 40 per cent. of the volume? A. Yes.

Q. What was your annual volume for this period, August, 1935? A. Approximately \$1,300,000.

Q. What was your volume for the year before? A. About the same, slight drop.

Q. What would you say for a period August, 1935, to July, 1936—in other words, taking a twelve-months' period— A. August, 1935, to July, 1936?

Q. Yes. A. Right.

Q. That your volume would be about one million three— A. I can't—no, I think it would go over that. From last July, 1935, to the present time I think it would be more like one million and a half.

Q. In 1934 to 1935, for the same period, what would you say the volume was? A. About a million three hundred.

Q. A million three hundred? A. Yes.

Q. Now, during the year 1936, and for certain months in that year, the dress business suffered from a serious handicap that it had not suffered from in the prior year; is that not so, Mr. Lifshy? A. Correct; for one month.

Q. What was that handicap or injury that the dress business suffered from during one month? A. That was the termination of our labor agreements with the union and the contractors' association, and there seemed—there were not any definite signs of signing of new agreements, and as a result threatened strike in view, and, considering the fact that we are quantity producers, we could not take the risk of putting merchandise into work knowing that it may be held up due to strike condition, with an evident loss. As a result, we laid low during the month of February, until things cleared up.

2000

2001

2002

Murray Lifshy—For Commission—Cross.

Q. And you, in common with a lot of other manufacturers similarly situated, lost a lot of business during that period? A. Well, we did cut rather heavy the month of January. Our average shipment a month runs around one hundred thirty to one forty thousand. The month of February it was sixty-four thousand, so you can draw your own conclusion.

Q. So your month of February dropped? A. About 50 per cent.

Q. Approximately eighty to ninety thousand dollars? A. No, approximately 60,000; \$70,000 would be 50 or 52 per cent. drop.

2003

Q. The dress business is a seasonal business, is it not? A. It is.

Q. When you lose the benefit of a month like that it is just lost to you? A. Well, you can't get it back.

Q. That is what I mean. If you have not got a dress to sell to a woman in February, she—in March you cannot sell her the dress you could have sold her in February? A. Naturally.

Q. And that is just a dead loss to the business? A. Well, it reflects it in the coming months.

Q. In your volume? A. Because stocks were getting low in stores—

Q. Yes. A. Naturally, there was an influx of buyers and a greater percentage of buying than there would have been ordinarily in March.

2004

Examiner Bennett: In a case of that sort, where you have labor troubles, what is the effect? Does it just delay deliveries?

The Witness: Well, if the labor trouble in question is temporary and we have quite a lot of that, it is just effective in delaying deliveries. In this particular instance new agreements between the labor—organized labor, the unions, and our par-

ticular association and other particular associations in our industry, kindred associations, had not been signed and—

Examiner Bennett: Well, does it affect ultimately the volume of business for six months or a year's period?

The Witness: It has the effect of affecting business that particular time. There usually is a reaction over a difficulty or stoppage of that kind, inasmuch as stocks have been getting low at the retailers and they must keep a certain percentage of dresses in accordance with their volume on their racks. The result is there is an influx of buyers and a sudden increase of business directly after settlements are made.

2006

Examiner Bennett: Then would you say it does not affect the volume that is sold over a longer period, such as a year?

The Witness: Over a year the effect of one month is not quite important.

Examiner Bennett: I see. All right. It is your witness, Mr. Weisman. I wanted to get that information.

By Mr. Weisman.

Q. Mr. Lifshy, let us see if we understand each other. You are a member of the industry? A. I am.

2007

Q. And you have been a member of it for seventeen years? A. I have.

Q. And you know it is subject to much hardship and travail? A. I do.

Q. Was not that handicap which the dress industry suffered in January of this year looked upon by all of the members of the industry generally as a great evil and that due thereto they had sustained a serious loss? I do not

2008

Murray Lifshy—For Commission—Cross.

mean that it put them out of business. A. Well, the general opinion—

Mr. Haycraft: I object to that, Mr. Examiner, as to what—

Examiner Bennett: I will let him answer.

2009 A. The general opinion, when you are sitting in your place doing nothing, is the fact that you are losing money and going out of business; but as it happened in this particular case the month of February was a very poor dress month. The demand for dresses that particular month was not, considering the fact that certain people were working, taking a chance of the union calling for a strike, other people more conservative were not—understand me, there was not a direct stoppage throughout the market—

2010 Q. I understand. A. It was in accordance with the particular policies of the manufacturer. Where they were conservative, they would not cut. Other manufacturers who were willing to take a chance continued to cut and continued to make—because the union did not stop their labor from operating and making dresses, they only intimated that if there were not direct steps taken to sign an agreement a stoppage and a strike would be called: It was a sword hanging over the manufacturers' neck. Certain manufacturers took it to ignore it; others laid low and did not want to take a chance; but the demand in the market at that particular time was not what was expected of the month of February. Our last February was an exceedingly poor dress month, so I would say that to some manufacturers, and in our instance in particular, the fact that we stopped the month of February gave us a chance to clean out our bins and really was more helpful, I think, than an hindrance.

Q. Well, that is looking at your business generally, but do you not believe that if you had continued during the

month of February to operate and work as theretofore your total volume for the year would have been larger?

A. Well, we did work the month of February, as I told you. We shipped—

Q. I mean working as you work every other month.

A. The total for the year, volume, would have been larger, but that was not—

Q. No, that is enough now. So that by reason of this unsettled situation your volume for this year is less than it would have been if there was not this condition then existing? A. As compared to the total volume, a very small percentage.

Q. I did not ask you that. I said, it would have been larger? A. Yes, the total volume, had we worked throughout the month of February—

2012

Q. Yes. A. The total volume would have been larger.

Q. That of necessity must be so in view of your previous testimony that the dress business is a seasonal business; is that not so? A. Right.

Q. In other words, if you are not there with the merchandise in this business when the purchaser wants it, you have lost the sale? A. That particular sale, yes.

Q. There is no question about that, and if you have not got, if you do not show—I will withdraw that. If you ship, during the month of February, seventy or sixty thousand, instead of 140,000, that difference, it is unfortunate and just lost to the manufacturer; is it not? A. I am taking it for granted that we would have shipped one hundred forty—

2013

Q. Yes. A. One hundred forty is a high month.

Q. Yes. A. I mean as an average.

Q. Yes. A. February usually runs around 110.

Q. Whatever it is. A. It would have been.

Q. That is one of the evils of your business? A. Yes.

Q. You have got to have the merchandise when the people want it? A. Right.

2014

Murray Lifshy—For Commission—Cross.

Q. If you have not got it you cannot sell it, and when you do have it later, you have to sell it at off prices? A. Yes.

Q. Is that not right? A. That is the evil of return.

Q. That is why you did not operate fully, you were afraid if there were actually a strike and the merchandise was held up, incomplected, then if it were later completed, it would be off-season merchandise and you would have to take a loss thereon? A. Correct.

Q. What total percentage of your shipments, do you say, are tendered for return, to you, a year, do you know?

A. My average return percentage—

2015

Q. No, listen carefully to what I say. Read the last question.

(Question read.)

Q. I want to call your attention in this question, so that you may not be mistaken, that I have used the words "tendered for return" as differentiated from the one you accepted the return of, see? You were about to answer what you accepted, I think. A. Well, the percentage tendered for return and the percentage accepted in return are about even.

Q. Well, you don't accept every return that is tendered to you, do you? A. You don't—but those instances are so few and far between that to put a direct figure on it, I cannot.

2016

Q. Well, what percentage of your total volume would you say is returned to you during the year? A. As an average throughout the year?

Q. Yes. A. I am not taking any particular years. It ranges anywhere from six—in fact, our lowest percentage was five at one time, to about eight, eight and a half per cent.

Q. Now, in 1934 to 1935, that is, from August to August, what would you say was the percentage of your returns, as contrasted with your total sales?

Mr. Haycraft: I object, not proper cross-examination.

Examiner Bennett: Is there anything in the direct examination on that?

Mr. Weisman: Well—

Examiner Bennett: Oh, I think regardless of that I will overrule the objection. You may go ahead.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. The Court says you may answer, if you know. A. I am giving it estimated, not from actual records.

2018

Q. Now— A. I would estimate somewhere in the neighborhood from 7 to 8 per cent.

Q. Then, what would you say were the causes for these returns? A. The causes for the returns are various. There are evident returns, causes, such as poor—flaws in material, poor workmanship, not as sample, and substitutions. Those are the evident causes. There is one cause that as a dress man I give as being a very good one, where it is not fair to the dress man, is the evil on the part of stores and buyers of their departments to return merchandise that they have left and cannot sell.

Examiner Bennett: We are going to take a recess of ten minutes.

Mr. Weisman: Thank you.

2019

(There was a short recess taken.)

Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. Mr. Lifshy, you were telling us about stores seeking to clean up their merchandise because they could not sell it by taking it back? A. Yes.

2020

Murray Lipshey—For Commission—Cross.

Q. Those are four reasons that you have given us for returns. A. The other reason I have given in my previous testimony. During that time we have had returns due to Guild—

Q. No, I am quite sure you are not mistaken about that. I asked you for the period 1934. A. Right.

Q. To August, 1935. A. Oh, I beg your pardon.

2021

Q. And I know that that was an inadvertent error on your part. I believe, however, you have left out some rather important reasons for returns, have you not, such as late delivery? A. Very seldom do we have a late delivery reason for return. If I may state myself, we have been considered right throughout the past number of years as a hot house.

Q. As a what? A. As a hot house. In other words, we seem to hit it right on our shelves, merchandise value, and, as a result, we are extremely careful in the taking of orders to check against cutting tickets, and merchandising work, and not to make promises unless we can fulfill them. The late delivery excuse is used quite often as a reason for return, but you will find that reason very seldom used in a popular-priced—and I talk relative to my price range, as compared to the higher price range, where delays are caused by importation of trimmings, or whatever it may be.

Q. Does your house use an outside sketching service?

2022

A. We have at different times had service rendered to us by outside sources.

Q. Are you having such service rendered to you right now?

Mr. Haycraft: That is objected to as not proper cross-examination; irrelevant and immaterial.

Examiner Bennett: Are you objecting?

Mr. Haycraft: Yes.

Examiner Bennett: Well, you are trying to get a statement as to to-day, or are you within the period?

Mr. Weisman: Within the period.

Examiner Bennett: Off the complaint?

Mr. Weisman: Yes, I will amend that as to within the period of the complaint.

Examiner Bennett: All right.

Mr. Haycraft: Well—

The Witness: The period is what, sir?

Mr. Haycraft: I object to the question as incompetent, irrelevant and immaterial.

By Mr. Weisman:

Q. The period is—

Examiner Bennett: Just a moment. That does not seem to be the basis—he has not stated the basis of his objection.

Mr. Haycraft: The basis of my objection, your Honor, is that this is not proper cross-examination. We are going into a field here of price, designs; that has nothing to do with the direct examination.

Mr. Weisman: Well, let us see. There is nothing terribly secret about this. This witness and I can understand each other. He said that his house is a "hot" house. Quote the word "hot," please. He explained that by that he meant he gets styles, that are good styles. I think one of the other witnesses has told you what—defined "hot styles," meaning public acceptance. Now, I want to find out whether his styles are so hot. It is well known that the sketching services do aid manufacturers in getting hot styles, and contribute thereto, and I submit it would have taken much less time to have the witness answer this question than to have all the argument.

I have sought, your Honor—

Examiner Bennett: Well, is this the only question you are asking on that particular line?

2026

Murray Lifshy—For Commission—Cross.

Mr. Weisman: Well, that is the first question that I have asked on that particular line.

Examiner Bennett: Oh, I understand that, but that may not be—but will there be twenty-five questions?

Mr. Weisman: That will depend upon the answer, Judge.

Examiner Bennett: Yes. Well, I will sustain the objection, then.

Mr. Weisman: Exception.

Examiner Bennett: All right.

2027

By Mr. Weisman.

Q. Do you know—

Examiner Bennett: That is, in view of the statement made yesterday for the record by counsel for the Commission, I could not see how it could have any bearing on the issues.

Mr. Weisman: I understand, then, that this objection is sustained in view of the stipulation heretofore made by counsel for the Commission that whether or not these returns were due to the fact that the merchandise was not accepted, and, in fact, copies of Guild merchandise, is immaterial?

Examiner Bennett: Yes.

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Mr. Weisman: Well, on that basis I will not continue that inquiry any further.

And I might say, in explanation, to the Court, that I had forgotten the stipulation. I mean, I want to keep as closely to the confines as possible.

Examiner Bennett: Yes. All right.

By Mr. Weisman.

Q. Now, during the period, August, 1924, to August, 1935, do you know what was the price per unit of your dresses? A. \$4.75.

Q. And have you maintained the same general unit price during the year following, that is— A. There is one break where we went into the \$3.75, that was the summer of 1935.

Q. That is, during the summer of 1935 there was this promotional— A. Well, we manufactured and sold \$3.75 dresses.

Q. \$3.75, and how many units, would you say, that you manufactured and sold during the period, August, 1934, to August, 1935? A. For a full year?

Q. Yes. You do not have to be exact. I imagine it would be 260,000 pieces, is that a fair estimate? A. No, it would not.

Q. More? A. It would be about that, yes.

Q. Yes. Trying to be fair. That is about fair? A. Yes, about that.

Q. I mean about 260,000 pieces, and, if I understood you correctly, you said that you got about 7 or 8 per cent. returns? A. Approximately.

Q. So your total number of units returned would be approximately 12,500; is that correct? I have taken $7\frac{1}{2}$ per cent. of 260,000. A. About that.

Q. During the year 1935 to 1936 you have done a volume of approximately \$1,600,000? A. A little less, about \$1,400,000, closer to a million and a half than a million six hundred.

Q. All right, about a million and a half. Now, what was your percentage of return during that period? A. As I remember, there was a slight increase in that particular period, about half per cent. increase.

Q. Now, do you keep a record of your returns—book—do you have a return book? A. Yes.

Q. Showing the total number of returns? A. Right.

Q. And you keep such a record for 1934 to 1935, that period? A. We did.

2032

Murray Lipshey—For Commission—Cross.

Q. You have a like record for 1935 to 1936? A. Yes, we have.

Q. Those records are intact? A. They are.

Q. And you knew, did you not, by reason of conversations with Mr. Ballon, your personal counsel in this matter, and with Mr. Haycraft and Mr. Seidman, that percentage of returns was an important—might be an important matter in this case?

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. Did you know that?

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Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Well, did you know, irrespective of any conversation you might have had, without regard to any conversation that you might have had with Mr. Ballon or Mr. Haycraft, that your returns during the period of August, 1935, to 1936, was important? Did you believe that to be important?

Mr. Haycraft: That is objected to.

Examiner Bennett: An objection?

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Mr. Haycraft: Yes.

Mr. Weisman: May it please your Honor, I have already asked him whether or not there are records about this thing. He has testified generally that this is his guess, and now I submit I am entitled to show on cross-examination that there were adequate records of this thing, and I went to find out whether or not he consulted them. I think it is a very fair question on cross-examination, and I submit—

Examiner Bennett: Ask him——

Mr. Haycraft: That is not the question.

Examiner Bennett: You ask him—have you consulted him?

Mr. Weisman: I first wanted to ask him that he knew it was important, and that if he did, why, he did not consult them. Perfectly obvious, and I submit——

Examiner Bennett: I doubt if a witness is expected to know.

Mr. Weisman: I do not say that he knows.

Examiner Bennett: Well——

Mr. Weisman: I said——

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Examiner Bennett: —even——

Mr. Weisman: I asked him whether he believed——

Examiner Bennett: Well, whether he believes——

Mr. Weisman: —it is important as showing the operation of the witness' mind and what he would do under such circumstances.

Examiner Bennett: Well——

Mr. Weisman: If I am restricted to this type of examination, it is perfectly obvious that my cross-examination becomes a nullity, because, if I say to him, "Why didn't you go to these records?" He will say, "I did not know it was important." That would be no cross-examination at all. The validity of my cross-examination is now being objected to, and the force of it completely disposed of and rendered worthless and nugatory, and I submit that was the purpose of the objection.

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Examiner Bennett: All right. Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Well, you knew the matter of these returns was important, did you not? A. I did.

2038

Murray Lifshay—For Commission—Cross.

Q. And with that knowledge, did you go to your records so that your testimony might be accurate? A. Yes, I did.

Q. Did you take off the exact number of returns during the period 1934 to 1935? A. I did.

Q. What is the exact number of returns? A. I haven't got the figures available. I did state that the period covered in 1935—there was a slight increase—

Q. No, I did not ask you that. You want to get out of here? A. Right.

Q. You will get out of here by answering questions.

2039

Mr. Haycraft: I submit, Mr. Examiner, the instruction should be given to the witness by the Examiner and not counsel.

Mr. Weisman: Will you read the last question? (Question read.)

By Mr. Weisman.

Q. You said you took them off? A. I did.

Q. And you took them off because you knew that it was important to this case? A. I did.

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Q. Now, since you knew it was important, and since you went to the trouble of taking them off, why did not you bring those records here showing the exact number of returns? A. Because, as I stated before, I took the figures off as a matter of information. I felt that there would be questions on the figures. These figures in question have shown only a slight increase for that period, approximately of half a per cent. The exact figures I have not with me now, but can get them during the afternoon recess, the afternoon period, if necessary.

Q. Will you bring down, for the afternoon period the figures that you made showing the total number of returns during the period August, 1934 to 1935? A. August, 1934, right.

Q. Will you? A. To 1935 or 1936?

Mr. Haycraft: Make it clear.

Mr. Weisman: I am asking him—everybody knows you are sitting there and supposed to be quiet. Of course you are not helping him. I am asking the witness a question. I object to this constant interruption. When you have a witness you can ask him what you want.

Mr. Haycraft: I am asking the Examiner to instruct the witness that it is not necessary for him to comply with request of counsel.

Mr. Weisman: And I say this is a deliberate attempt by Mr. Haycraft to suppress evidence that I am entitled to get from the witness that he tenders— 2042

Examiner Bennett: You have your privilege of objecting, Mr. Haycraft, and if you want to make an objection—

Mr. Haycraft: I object to that request, and ask—

Examiner Bennett: Read the request.

(Record read.)

Mr. Weisman: I say there is no legal objection offered to that question.

Examiner Bennett: Why, I think that it is not matter for a legal objection.

Mr. Weisman: I agree with your Honor.

Examiner Bennett: I will say this to the witness, that that is a matter of discretion on your part. You come here and give testimony, and to bring certain things, and they are all that are in the jurisdiction of this hearing. Now, the Examiner is not going to compel you to bring anything else into the hearing room, but if you wish to do it, for this Examiner, or for these respondents, why, I have no objection whatever to your doing it. 2043

The Witness: Thank you.

2044

Murray Lifshy—For Commission—Cross.

Examiner Bennett: That is a discretion that is entirely yours.

Mr. Haycraft: I wish to point out, Mr. Examiner, the question on my interrogation. I wish to renew it for the reason it is not proper cross-examination. The witness did not testify on the direct examination with respect to this matter, with respect to the percentage.

Examiner Bennett: Yes, there is so many angles to that, we cannot—

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Mr. Haycraft: In other words, Mr. Examiner, it seems to me that in a case of this kind where the witness has been tendered and offered his testimony, that he should be cross-examined with respect to his testimony, and not to testimony he did not testify about.

Examiner Bennett: I know, but, Mr. Haycraft, you did open the matter of returns.

Mr. Haycraft: Yes.

Examiner Bennett: Now, opening the matter of returns, you opened the matter of returns?

Mr. Weisman: Yes.

Mr. Haycraft: I opened the matter of returns on one particular—

Examiner Bennett: That is all there is to it.

Mr. Haycraft: —matter.

2046

Examiner Bennett: You opened the general question.

Mr. Haycraft: If this witness can testify—

Examiner Bennett: You asked him if there were others?

Mr. Haycraft: Yes.

Examiner Bennett: And if there were others considered—

Mr. Haycraft: Yes, if the witness can testify as to the number of returns on account of the Guild.

stamp of warranty, I have no objection, I want him to produce them, but he informed me on the witness stand, and off the witness stand, that he did not have such records and could not testify as to the exact numbers.

Examiner Bennett: That is true.

Mr. Haycraft: How are we going to get anywhere, and where is going to be probative value or weight to testimony that does not relate to that?

Examiner Bennett: Yes, but opening the matter up, as he did, we are going to hear—get all the information we can.

Mr. Haycraft: Of course you understand——

Examiner Bennett: —on this matter.

Mr. Haycraft: May it be understood——

Examiner Bennett: If he wants to bring in that matter I have no objection.

Mr. Haycraft: May it be understood—I wish to get before the Examiner, if I may, the full meaning or objection to that point or contention on that point.

Examiner Bennett: All right.

Mr. Haycraft: That is this: That so far as the Commission's side of the case is concerned, we are attempting to prove that there were returns, that the returns were substantial. Now, whether there were returns—that these returns are on account of the requirement of the Guild, that is, the co-operation of the retail dealer with the Guild.

Now, it is our contention, and I certainly urge it, that when and where the retail dealers make return guarantees for reasons other than the requirements as stamped, or the requirements of the Guild, it is irrelevant and immaterial to the issues in this case.

Mr. Weisman: Excepting——

Mr. Haycraft: Just please, a moment.

2050

Murray Lifshy—For Commission—Cross.

Mr. Weisman: Excuse me, because—

Mr. Haycraft: I am stating my position now.

Examiner Bennett: Are you through?

Mr. Haycraft: No, sir; I am not.

Examiner Bennett: All right.

Mr. Haycraft: And that it follows that when questions are put to the witness which will develop, as far as we can develop, the number of such instances, that it is not material and not relevant to the issues to develop the total number of reasons other than the warranty stamp—

Mr. Weisman: May I interpose?

2051

Mr. Haycraft: —the Commission is not interested in this matter of how many returns were made for reasons other than the warranty stamp.

Mr. Weisman: Well, if that is a fact, will you kindly explain to me what was the purpose of your saying to this witness, "What is the effect of these returns on your business?" if you were limiting it to these particular returns?

Now, it will become tremendously important in this case if that question is material to show that these returns were infinitesimal in comparison to the total number of returns.

Examiner Bennett: Well, Mr. Weisman—

Mr. Weisman: Excuse me.

2052

Examiner Bennett: It is not necessary to argue the matter.

Mr. Weisman: Oh.

Examiner Bennett: I have made a decision.

Mr. Weisman: Oh, thank you, I thought you—

Examiner Bennett: I am going to strike it out.

Mr. Weisman: All right, thank you, Judge. I had misunderstood.

Examiner Bennett: All right.

Mr. Weisman: Will you read the last question?

(Last question read as follows: "Q. Will you bring down for the afternoon period the figures that you made showing the total number of returns during the August, 1934, to 1935?")

By Mr. Weisman.

Q. I believe you answered my question. A. Right.

Q. Now, have you got your original sheets showing how you made these calculations? A. Well, calculations were made out of the general ledger book, and an adding machine tape was taken off, adding up the twelve months. I personally did not add them up, between August 1, 1934, and July 31, 1935. I went by the year 1934 and 1935.

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Q. I see. A. This man put the figures at a different relationship to each other.

Q. I see. A. I took off of an adding machine the amount shipped, took off an adding machine the amount of the returns from my general ledger, and then struck a percentage basis.

Q. I see. Now, will you also bring the figures for the period August, 1935, right down to date? A. To date, yes.

Q. And I understand you to say "Yes"? A. Yes.

Q. I understand that you are an officer of the Trussel Dress Company? A. No.

Q. Are you interested in it? A. Yes.

Q. In what capacity? A. In the capacity—the Trussel Dress Company is a corporation. I am interested in the capacity of being a contract employee. I work under a contract.

2055

Q. You have a contract? A. With the Trussel Dress Co., Inc.

Q. Who are the officers of the Trussel Dress Co., Inc.? A. Henry A. Trussel.

Q. Do you know his address? A. Woodmere, Long Island. I do not know his local address.

2056

Murray Lifshay—For Commission—Cross.

Q. Who are the other officers? A. I believe his wife is an officer.

Q. Will you also bring with you this afternoon the return records from which this tape and transcript totals were made up? A. General ledger?

Q. Yes. A. Yes.

Q. Not the general ledger. A. That is what they are made up from.

Q. Have you not got a loose-leaf book in your business wherein is entered all returns from day to day? A. You want the individual return books?

Q. Yes. A. And the individual charges?

2057

Q. Yes. A. If the Court please, and Mr. Weisman, I would need a double truck, and you are asking something that would be impossible for me to secure during an intermission of a couple of hours. As you testified—as you figured out for me before—shipping 260,000 dresses and receiving in return 11,000 returns, charges running and return slips running anywhere from one, there are quite a number of charges, and quite a number of return slips.

Q. Maybe I have not made myself plain. I see I have not. I believe it to be the practice in most concerns that when they accept a return they send out a credit memorandum? A. Right.

2058

Q. That credit memorandum, a duplicate of it, is put in a loose-leaf book? A. Right.

Q. Now, that book is the book that I want for this period. A. Yes, but you want the book for a year period, that is the book I am referring to.

Examiner Bennett: I think that request is unreasonable.

The Witness: I would not hazard a guess how many—

Examiner Bennett: I would not so advise the witness.

The Witness: —how many books there are, Quarter of a million dresses.

Mr. Weisman: I do not want them for a quarter of a million——

Examiner Bennett: We will not go into a whole lot of books.

The Witness: You want it for a whole year?

Mr. Weisman: I want it for the returns.

The Witness: Returns would be about 12,000 dresses.

Mr. Weisman: That would make it 12,000 pieces.

The Witness: Yes, but I have not got them available, for I haven't touched them from 1933 on.

Mr. Ballon: May I say that if counsel will wait until the noon recess and tell me what documents he wants, if the request is reasonable and counsel is entitled to those documents, I will gladly cooperate with him and see that they are brought down.

Mr. Weisman: All right, that is fine.

This is Mr. Ballon who makes that statement—he has already appeared as counsel to the witness.

Examiner Bennett: Well, of course, there will be—if there is objection to going into any long examination with these documents, of course, that is a matter for the Examiner. The Examiner is not likely to permit any extensive searching of books on cross-examination——

Mr. Ballon: When I made that statement——

Examiner Bennett: —or going into the hearing on that sort of request.

Mr. Ballon: Your Honor, I make that statement without intending in any way to bind the Commission. I simply made that offer for the purpose of showing the good faith of this witness so that his integrity cannot be impeached about the state-

2062

Murray Lifshy—For Commission—Cross.

ments he has made on direct examination. Whatever the witness has testified to, he will stand upon by his figures and records.

Examiner Bennett: If he is going to bring his summary, I haven't any objection to him bringing his summary, and that being made a basis for questions, but I have objection to our wasting our time with going through lengthy examination of original documents. If you want to do that, you can do it for your own case when you present it.

Mr. Weisman: Just please do not take this on the record.

2063

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We are not going into any such inquiry.

Mr. Weisman: Then may I make this statement?

Examiner Bennett: I may as well serve notice on you right now that we are not going into that sort of an inquiry. If you want to bring in a memorandum and make a reasonably short inquiry based on that memorandum, why, I have no objection.

Mr. Weisman: I wish to take most respectful exception to the ruling announced. I wish to make a tender of proof to state that I believe that I would have proved by the introduction of these original documents into evidence, which are the documents from which this witness has such information as he has testified to concerning the returns, that he was mistaken with regard thereto.

2064

Examiner Bennett: Yes. I will say as to that statement of proof that at the proper time the respondents are entitled to present these documents if they can secure them.

Mr. Weisman: Well, I am afraid later on I will not be able to get them, Judge.

Examiner Bennett: But this is not the proper time.

Mr. Weisman: All right, I except.

Your statement still stands, Mr. Ballon?

Mr. Ballon: By all means.

Mr. Weisman: Will you bring these down?

Mr. Ballon: I did not make that statement, Mr. Weisman.

By Mr. Weisman.

Q. Without regard to these records, it is your statement that your returns after August, 1935, for the year, were about a half a per cent. greater than during the prior year? A. They were. 2066

Q. You are quite willing to answer me fairly to the best of your ability? A. I am.

Q. Now, you have testified that there was an effort, and there still is, for people to make returns because they could not sell the merchandise? A. I did.

Q. In other words, at the end of the season you find that a retailer finding himself with merchandise on hand will attempt to find an excuse for returning it which is not founded in fact? A. Not at the end of the season as you just stated—

Q. Well, at the end of— A. No, sir, during a season a buyer has to constantly make periodical trips to the market, keep replenishing her stock. Merchandise that hangs in her stock, and end stuff, for a period of ten days is considered slow-moving merchandise, and there is a desire to replace that merchandise with newer merchandise. Most buyers would on a budget system. Have so much to spend, in proportion to their stock. If by returns they can reduce their stock they can naturally re- 2067

place that merchandise with newer merchandise in the market, so when you say at the end of the season, you are not correct.

Q. Well, I quite agree with you. Let us see whether this is not a fact: A buyer comes in to buy merchandise and she seeks to exercise her judgment that that merchandise is readily salable and will move quickly; is that not so? A. Right.

Q. As a matter of fact, that is the basis of her employment? A. Correct.

Q. And when she gets merchandise into her department, if the merchandise does not move sufficiently fast she feels that sooner or later, most assuredly, in order to move it, she will have to mark it down? A. Correct.

Q. That is, reduce the margin of profit? A. Yes.

Q. When this becomes apparent to the buyer, or to some of the buyers, there is then the effort to return the merchandise to the manufacturer? A. By some of the buyers.

Q. Yes, I did not say all of them; you could not stay in the dress business if it were true of all of them. This is generally regarded in the trade as an unjust thing, or unfair return? A. Right.

Q. In other words, the order having been placed and given, the buyer having made a mistake, she now wants to saddle the manufacturer with that mistake; is that not so? A. It is.

Q. Now, during the period 1934 to 1935, the dress industry was operating under a code of fair competition; is that not so? A. They were.

Q. And one of the unfair trade practices of that code of fair competition was aimed at such unjustified or unfair returns; is that not so? A. It was.

Q. And that item of the code of fair competition for the dress industry to a great degree lessened such unfair and unjust returns, did it not? A. It did.

Q. Now, the period August, 1935, to 1936, there was no code of fair competition for the dress industry, is that not so? A. It is.

Q. And such unfair and unjustified returns were not longer unfair trade practices? A. Not exactly. Certain conditions due to their usage, during the N.R.A., had set up certain rulings by which we added ourselves, of discounts is one, where the N.R.A. ruled that a standard 8 per cent. discount should prevail throughout the industry—by which we guided ourselves; discount, is one, where the N.R.A. ruled that a standard 8 per cent. discount should prevail throughout the industry, why, that discount still prevails. The manufacturers have not gone back to the 10 per cent. when the N.R.A. went out.

2072

Q. You mean some manufacturers? A. Most of them have not.

Q. You mean manufacturers— A. When I—

Q. How far—

Mr. Haycraft: Let the witness finish his answer.

A. When I specified the word "manufacturers," every industry has an outer fringe that really should not be classified with the manufacturers in that particular field.

By Mr. Weisman.

Q. You mean that they are chiselers? A. Call them that.

2073

Q. You mean, they seek to engage in unfair trade practices? A. Yes.

Q. As generally recognized—

Mr. Haycraft: Mr. Examiner, may the witness answer?

Mr. Weisman: I am asking him, and he is interrupting.

2074

Murray Lifshay—For Commission—Cross.

Mr. Haycraft: You keep interrupting; the witness started to answer.

Mr. Weisman: Oh, you are interrupting my examination. Please.

Examiner Bennett: Just a moment. Talk one at a time. I do not see how the stenographer can get your statements when you are both talking at once.

Mr. Weisman: Let us see—

Examiner Bennett: Go ahead and give your statement, Mr. Haycraft.

2075

Mr. Haycraft: Mr. Examiner, the witness started to answer counsel's questions about these returns, he started and was interrupted three times in that answer. Now, I submit he should be allowed to complete his answer before he is interrupted.

Mr. Weisman: Let us see if he was interrupted. Will the Reporter go back and read?

(Record read.)

Mr. Haycraft: You have not got it all yet; the original question.

Mr. Weisman: Now you are quarreling with the stenographer.

2076

Mr. Haycraft: The question propounded was back of that, and these are all interrupted questions that I am objecting to, that I am talking to. If you go back and read, you will find the underlying question that Mr. Weisman propounded. That is where the question was interrupted. I submit that the witness should be permitted to finish his answer.

Mr. Weisman: He will finish.

The Witness: I did not finish the particular question.

Mr. Weisman: We will come back to it then.

(Question read.)

Mr. Haycraft: I want the witness to answer that particular question.

Mr. Weisman: Now, tell me, or shall I address myself to the Court?

Examiner Bennett: Have you finished?

The Witness: I have not finished my particular trend of thought on that particular question.

Examiner Bennett: Go ahead and complete what you intended to say.

The Witness: I was trying to bring out that the N.R.A. had definitely impressed the manufacturers with certain provisions that were beneficial to their business, discount, as I outlined there, was one of them; the matter of unjust returns was another. When the N.R.A. was declared unconstitutional the matter of unjust returns was not taken advantage of to the extent that your query would lead one to believe.

Mr. Weisman: I ask that that answer be stricken out as to the extent that my question would lead anyone to believe—what my question would lead anyone to believe, that is on the record.

The Witness: Would lead me to believe.

Examiner Bennett: Well, we will let it stand as it is.

Now, go ahead.

The Witness: The buyers of stores had become accustomed to purchasing in a conservative manner. The N.R.A. had eliminated, to a great extent, memorandum purchases that was quite the thing for it, and there were not any influx of unjust returns due to the listing of the N.R.A.—

Examiner Bennett: All right.

The Witness: —as there were prior.

Examiner Bennett: Let us stop there.

2080

*Murray Lifshy—For Commission—Cross.**By Mr. Weisman:*

Q. But in answering that question, you said that there were not so many unjust returns. Now, there were no unjust returns to the extent that my question seemed to imply; is that so? A. Yes, sir.

Q. But there were returns that were unjust, to some extent? A. In proportion.

Q. Is that not so? A. In proportion to the amount of returns, they were unjust, during the N.R.A. period. We had unjust returns during the N.R.A. period.

2081

Q. Is it your statement that the fact that the N.R.A., or the Code of Fair Competition for the Dress Industry came to an end, made no change in the conditions that you operated under? A. In my particular business?

Q. Yes. A. No.

Q. You were charged with being a frequent violator of the Code of Fair Competition for the Dress Industry, were you not?

Mr. Haycraft: I object to that.

A. We were not.

Mr. Haycraft: I object to that, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

2082

Examiner Bennett: All right, it has been answered and you can get that—

Mr. Haycraft: I move to strike that out.

Examiner Bennett: It does not make any difference whether it was sustained, or otherwise.

By Mr. Weisman:

Q. Well, when you said "you were not," did you answer that you were not, because I used the word "frequently" in my question?

Mr. Haycraft: I object to that, Mr. Examiner. You sustained the last objection.

Mr. Weisman: I thought you——

Examiner Bennett: I sustained the objection to that line of questions.

Mr. Weisman: Well, I——

Examiner Bennett: They being violators of some code that was not legal at the time, and this is out-dated now.

Mr. Weisman: Well, except that——

Mr. Haycraft: It has no relevancy to this proceeding.

Examiner Bennett: I have sustained the objection to that, and I will not hear any more questions on that.

2084

Mr. Weisman: Then I wish to make this tender of proof, then if I had been permitted to pursue this inquiry——

Mr. Haycraft: Just a moment.

Mr. Weisman: Well, now, just a moment.

Examiner Bennett: Wait a moment.

Mr. Weisman: I want to have this stopped, being interrupted in this——

Mr. Haycraft: I want to interrupt this right now, if I may.

Mr. Weisman: The Court has ruled you may not.

Mr. Haycraft: He has not made any such rule. That is your ruling, not his.

2085

Examiner Bennett: He can make a tender of proof.

Mr. Haycraft: Well——

Mr. Weisman: I wish to make the tender of proof, and I ask that you not interrupt me——

Mr. Haycraft (interposing): I want to get clear the Court's ruling, if I may. Is it your ruling, Mr. Examiner, that counsel can make a tender of proof on any subject he desires in this proceeding?

Examiner Bennett: Yes, he can make a tender of proof.

Mr. Haycraft: Regardless of its reflection?

Examiner Bennett: I do not care. If he makes an absurd tender of proof, it is too bad, that is all.

Mr. Haycraft: I just want to get the correct understanding.

Mr. Ballon: Before counsel proceeds, in view of my previous statement that I represent this witness personally, and in view of the fact that this tender of proof might be misunderstood, and certainly might result in damage to this witness personally, I request your Honor in this particular case to direct counsel not to make this particular tender of proof.

Examiner Bennett: Yes, I am going to cut out all proof on that matter. I am not going to cut out a tender. This man cannot be responsible for what Mr. Weisman offers to do——

Mr. Ballon (interposing): A tender of proof certainly——

Examiner Bennett: He certainly could not be responsible; your firm certainly could not be responsible for what Mr. Weisman offers to do in his record.

Mr. Ballon: As long as we understand it, your Honor, but if it appears in the newspapers upon the following morning, the fact that counsel has made an offer of proof——

Mr. Weisman: Do you want this Court to conduct this case with a view to the newspapers?

Examiner Bennett: Take your time, now.

Mr. Weisman: It is a new line.

Examiner Bennett: This gentleman is speaking.

Mr. Ballon: The mere fact that counsel has made a tender of proof, your Honor, leaves an in-

ference that perhaps there is some justification for that tender. I say, in this one instance, why, it may result in damage to the witness personally, that you request counsel to refrain from making this tender of proof, particularly since it has no relevancy to the issues in this case.

Mr. Weisman: It think it is very relevant.

Examiner Bennett: I am sorry, but I am not going to shut out tenders of proof. The matter is a matter of law, while I may consider it an absurd tender, but still that is my opinion.

Mr. Weisman: I say, with all due humility, I trust the Court is in error.

2090

I make this tender of proof, that if I had been permitted to pursue this inquiry further I would have been enabled to prove that the Trussel Dress Company was a frequent violator of the Code of Fair Competition for the Dress Industry, that it violated particularly those tenets of the dress industry relating to fair trade practices, that it made frequent complaints on its own account by reason of unjust returns; and that the statement of the witness that it was not a violator of the Code of Fair Competition was not, in fact, truthful, and this proof would, in addition to the facts therein contained, would have had direct bearing and weight upon the credibility of the witness.

Examiner Bennett: Now—

2091

Mr. Ballon: Your Honor—

Examiner Bennett: I shall entertain a motion to strike that tender of proof as irrelevant and unfounded, without any foundation of fact, and a gratuitous reflection upon the witness in this form.

Mr. Ballon: Your Honor, may I move that the statement of counsel be stricken and expunged from the record?

2092

Murray Lifshy—For Commission—Cross.

Mr. Weisman: Object to being expunged. I wish to make it a basis.

Examiner Bennett: You may move that it be stricken and it will be stricken. That is sensible. We will not strike it out physically.

Mr. Weisman: May I have an exception to your Honor's ruling?

Examiner Bennett: Certainly, certainly.

Now, we are going to take a recess until 2 o'clock.

Mr. Weisman: All right.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock of the same day.)

2093

AFTERNOON SESSION—2 P. M.

Examiner Bennett: All right, you may proceed. Take the stand, Mr. Lifshy. Be in order, please.

Mr. Weisman, you may proceed.

MURRAY LIFSHEY resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

2094

Q. Before the adjournment your counsel made the statement that we would have produced here this afternoon certain documents. You heard that statement. A. I did.

Q. I think, among them, was your return books. A. No. It was understood that I was to produce a statement that I claimed would be drawn up by a certified public accountant, who happens to be down at our place at the present time, making a mid-year inventory, listing business and returns over the two periods in question, and the percentages of same.

I have just had a telephone communication with the accountant, who claims that a statement left the office there about twenty minutes after one, and it will be here.

However, from his copy, he did give me the following information: Percentage of returns from August, 1934, to the end of July, 1935, 7.54; percentage of returns from August 1, 1935, up to and including July 11, figures 8.31, an increase over the latter part of . . . or an increase of 10 per cent. on returns.

Q. Now, would you say, or would you deny, that since the abandonment of the Code of Fair Competition for the Dress Industry that there are a great many more unjustified returns in the industry than there were while the code was in operation? A. Speaking for the industry, I am not in a position to speak, because I have no available figures.

2096

Q. Well, wait a moment. Aside from your available figures, what do you think generally about that situation?

A. Basing—

Q. From your general knowledge—

Mr. Haycraft: Wait—

Mr. Weisman: Let me finish.

A. My general knowledge can be only confined to my particular business—oh, pardon me (taking paper from bystander).

May I, your Honor?

2097

My general knowledge can be based only upon my particular business. It happens that the Trussel Dress Company was the only dress concern that I have ever worked for. My contacts with other concerns is very slight, inasmuch as I am inside most all the time, so any estimates, or any figures that I give must be based only upon my own particular business and not upon the industry.

2098

*Murray Lifshy—For Compiission—Cross.**By Mr. Weisman.*

Q. So you haven't any knowledge of any general situation that may exist in the industry of which you are a part? A. No general knowledge.

Q. All right. I assume that this total increase, that is .77 of 1 per cent.—I withdraw that. This .77 of 1 per cent. of increase, is that due to these various causes, such as flaws of merchandise, poor workmanship, not as sample, and also because some of them were copies of Guild merchandise? A. Well, that 77—.77 per cent. increase—does not include any of those reasons, for the simple reason that those reasons for return are included in the bulk; but speaking of the increasing alone, in other words, speaking of the .77 increase, I can attribute that percentage of increase of returns, or part of that percentage, to the Guild activity.

2099

Q. Well, how do you know that— A. I don't—

Q. You did not examine these papers yourself, did you?

A. Which papers?

Q. From which these figures were made up. A. Are we talking of the figures, or are we talking from my opinion of the increase in returns?

Q. I am saying to you that the number of returns during the year included returns by reason of flaws in workmanship, of flaws in materials, poor workmanship, and not as samples, and perhaps to a very small degree because of late deliveries, and because some of the merchandise returned was copies of Guild merchandise. A. Yes. Correct.

2100

Q. Is that not so? A. Correct.

Q. In other words, there are all these reasons for the total amount of these returns? A. Right.

Q. And these returns were not in total due to the fact that the merchandise returned was copy of Guild merchandise? A. The returns—

Q. "Yes" or "no." A. It is a question I cannot answer "yes" or "no."

Q. All right. I will read it again and see if you can answer it.

(Question read.)

Mr. Haycraft: It is too indefinite, Mr. Examiner, what he means.

The Witness: Are we speaking—

Mr. Haycraft: Wait a moment.

The Witness: At the present time, if the Court please—

Mr. Weisman: Wait a moment. When Mr. Haycraft makes an objection I want you to give him the same courtesy as I am expecting you to give me. Wait until he gets finished. 2102

Mr. Haycraft: I object, Mr. Examiner. It is too indefinite.

Examiner Bennett: Yes. Well, I think that the question can be answered, unless the witness may experience, from his knowledge of the industry, some difficulty that I cannot see.

The Witness: As I understand it—

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: "These returns." I do not know what that means, Mr. Examiner.

By Mr. Weisman.

2103

Q. Well, the total of returns that you have testified to as having taken place during the period 1935 to 1936.

A. The total returns were due to all of those reasons.

Q. Exactly. A. As enumerated by you.

Q. That is what I asked you. A. I thought you were—

Q. No. A. —speaking of the increase—

Q. No, I am asking you about the total.

2104

Murray Lifshy—For Commission—Cross.

Examiner Bennett: The answer was obvious, I think.

Mr. Weisman: It should not be difficult for the witness to answer, then.

By Mr. Weisman.

Q. Now, as to these returns, they would number, in units, approximately 300,000 garments; is that not correct? A. Which returns are you referring to?

Q. I do not mean—I will withdraw that question. A. About 30,000.

2105 Q. Yes. In other words, during the year—August, 1935, to the date that you have testified to, your firm received the return of approximately 30,000 units of merchandise? A. Yes.

Q. And this 30,000 units of merchandise, the return thereof, is attributed by you to such causes as flaws in the merchandise itself, poor workmanship, that the merchandise was not as sample, in a few cases that it was late delivery, and in certain other cases by reason of the fact that there were copies of Guild dresses which were returned to you. A. Correct.

Q. Now, did you at any time make an examination of all of these 30,000 returns during that year? A. Now, how do you mean? I examined the dresses or examined the reason for their return?

2106 Q. Examined the dresses. A. Examined the dresses? No.

Q. Do you know how many of those 30,000 returns where the customers claimed that they were being returned for flaws in the merchandise were that the merchandise was actually flawed? A. Well, a flawed merchandise, return of flawed merchandise, usually consists of a few dresses. A customer's habit in making a return is to send a letter to the manufacturer explaining that "We are returning so many dresses." He will explain the reason,

flawed merchandise is usually a minor—a small percentage of the returns. I mean, either one, two or—very small percentage of the original shipments—let me say—in other words, if I ship a man twelve dresses you would usually get back as a maximum, the most you could get back is two or three garments from that return being flawed.

Q. Well, adopting your own figures, if you sent back to a merchant twelve dresses, and he returned to you four flaws, why, that might be a small percentage in your mind, that would be 16 per cent. of the shipment returned for flawed merchandise, and as compared to your total returns it would be not alone a large percentage, but twice as your total percentage. A. Yes, but you are neglecting to take into consideration the fact that merchandise is examined before it goes out. The percentage of customers receiving 16 $\frac{2}{3}$ of damaged merchandise, as compared to the total amount of merchandise shipped, will give you the difference in your figures of sixteen to eight.

2108

Q. Now, I will have to come back to my first question and see if you can answer it. I asked you this question—if you do not understand it, tell me and I will reframe it and try to make it simple: Do you know, of your own knowledge, the percentage of the 30,000 units that were returned to you were returned to you by reason of the fact that the merchandise was flawed? A. I don't.

Q. I don't want you to guess. A. I cannot estimate.

Q. Then if you don't— A. I cannot estimate—I cannot definitely say no. I have not counted the 30,000 dresses you speak of, and—by the way, it is not 30,000, getting down to figures, that would be approximately \$142,000, and returns amount to about \$114,000, so we are quite a bit above our figures, but to say—

2109

Q. Wait a moment. I do not think so. On what basis we are quite above our figures? A. Well, I am taking it from actual figures here.

2110

Murray Lipshey—For Commission—Cross.

Q. Well, what were your total shipments? A. For the year 1935 to July 11, \$1,375,860.04.

Q. That is less than a full year's period? A. That is approximately two weeks less.

Q. Yes. A. And there was very little being done in the last few weeks, so it is pretty accurate.

Q. Now, how many units do you estimate made up that figure? A. You mean the shipments?

Q. Yes. A. Would be approximately 280,000 dresses.

Q. How do you arrive at the figure 280,000? A. Well, 28 times \$4.75 is 13,375, putting a string of aughts up to it, to reach it up to the millions, \$1,330,750, so I am pretty nearly right when I say 28,000 dresses.

2111

Q. Are you not failing to take into consideration the fact that you testified that some of your units were sold for less? Do you know that some of them were sold for less than \$4.75? A. Well, yes, there was merchandise sold below \$4.75.

Q. Then, a fair estimate, taking into consideration that fact, would bring that figure up considerably? A. 300,000.

Q. Or, to some degree. A. 300,000 dress.

Q. How? A. 300,000 dresses.

Q. 300,000 dresses? A. Yes.

Q. Now, what is .854 or .13 of 300,000 dresses? A. Would be 24,000 and about 25,000.

Q. About 25,000 dresses? A. Yes.

2112

Q. Now, of these 25,000 dresses I will once more ask you whether you know what percentage of them were returned for flaw? I do not ask you to guess. I ask you if you know. A. I could not, no.

Q. All right. Now, do you know, of these dresses, what percentage of them were returned because of poor workmanship—the claim of poor workmanship, not the fact of poor workmanship? A. Are you asking for actual figures?

Q. I asked you if you know, yes. A. Actual figures? No.

Q. You do not know? A. It would be only an estimate on my part.

Q. Exactly. A. Based on my experience.

Q. Do you know what percentage of these dresses were returned because of the fact that the customer claimed that they were not as the sample which were shown? A. No, same answer.

Q. Now, as to late delivery claim, do you know what portion of them were returned by reason of the fact, on the claim, rather, not the fact, the claim of late delivery?

A. No actual figures, no.

Q. Do you know, of these 25,000 units, what proportion of them were returned by the purchaser by reason of the claim that the dresses returned were copies of Guild merchandise? A. To give you actual figures?

Q. I want actual knowledge, whether you know. A. Actual knowledge, the only actual knowledge that I have—

Q. No, do you know? A. I do know.

Q. Yes. A. I do know from actual knowledge, from the fact that I open up the morning's mail at every return before it is accepted by my receiving department—every return is O.K'd by me, provided I have received a letter from the account in question telling us the reason for return. I do know, and can estimate, what the percentage was.

Q. In other words, you are now giving us, from your experience, what your present impression is; is that not so? A. What my reaction and impression is.

Q. Yes. A. From the handling of my personal business.

Q. Yes. Did you ever keep a record of the dresses which were returned to you by reason of the claim that they were copies of Guild merchandise? A. I did not. They were treated in the same manner as all my other records of like—like records, returning records, were kept. That is, we kept the letter in question for a period of sixty to

2116

Murray Lifshay—For Commission—Cross.

ninety days, and, rather than to encumber our files with this constant flow of letters, orders, and everything else, they will be destroyed.

Q. I see. Have you frequently found that customers desiring to make returns would make—I will withdraw that question. Would you say that your concern, during the year, sent out to its customers approximately twenty to twenty-five thousand dresses, which were either flawed or which were either not as represented, or which had poor workmanship in them? A. Well, if the total returns were 25,000, you are asking me to agree, or to say, that all of these dresses were damaged dresses? Why, I would have to say no.

2117

Q. Do you mean to say that frequently terms are made by customers which are not justified, or not founded in fact? A. No, I don't mean that. You asked me if I would agree with you in the statement that twenty-five—twenty to twenty-five—

Q. No, I said— A. Twenty to twenty-five thousand of the dresses we shipped during the year were damaged?

Q. No, I wanted to know—you testified that approximately 25,000 returns were made. A. Yes.

Q. Now, I, in framing my question, left out the reason, as one of the reasons for the return, copies of Guild merchandise. A. No, you asked me—

Q. Wait a moment. A. —if I am correct—

2118

Q. Let me explain to you, I am not asking you a question, I am trying to make you understand my question, and I therefore, instead of using the definite figure of 25,000, as testified by you, I gave you a sufficient leeway and said from twenty to twenty-five thousand. In other words, what I am seeking to ascertain from you is whether or not of your total shipments during the year 1935 to 1936, approximately 20,000, bearing in mind you have gone back 25,000— A. Yes.

Q. Approximately 20,000 of the garments that you sent out were actually flawed, or not as represented, or not delivered in time. A. No.

Mr. Haycraft: I object to that.

Mr. Weisman: Well, he answered.

By Mr. Weisman.

Q. Why not?

Mr. Haycraft: I move to strike the answer.

Mr. Weisman: I think it is competent.

Mr. Haycraft: The attorney hasn't any business of going into the actual figures, whether they were or were not flawed— 2120

Mr. Weisman: I think I have.

Mr. Haycraft: I claim that if the reason given for the return is comparable with the return that was made, he has no right to go into these other things as to whether that were actually true.

Mr. Weisman: Well, what happens in one case—

Mr. Haycraft: I move to strike that answer.

Examiner Bennett: Well, I will sustain the objection.

Mr. Weisman: I submit it is a very proper answer.

Examiner Bennett: I will sustain the objection as to the truth or falsity of the matter. Confine yourself to claims. I do not believe you may go into whether the merchandise was good or bad, or otherwise. 2121

By Mr. Weisman.

Q. Is it not a fact that people frequently make claims with relation to the return of merchandise which, upon

2122

Murray Lifshy—For Commission—Cross.

examination, you find are not well founded? A. Quite a few claims are made—

Q. Now, answer— A. —it is—

Q. Wait a moment. Just a moment. Just answer the question. A. Quite a few claims are unfounded.

Q. And in these cases where quite a few claims are unfounded—withdraw that. Now, I understood you to say this morning in your direct testimony that when a buyer makes a claim for a return you take it back rather than antagonize the buyer? A. I—

Q. Did you so testify? A. I don't think you got the sense of it.

2123

Q. Wait a moment. A. Rather than antagonize the account—

Q. Wait a moment, Lifshy. It is getting warm.

Examiner Bennett: Let the witness answer.

Mr. Weisman: Your Honor, I only asked the witness one question.

By Mr. Weisman.

Q. I asked you, did you so testify? A. I did.

Q. All right, that is the answer.

Examiner Bennett: Well—

By Mr. Weisman.

2124

Q. Now, when these people who did not understand their business made these claims upon you, and ask you to accept the return of this merchandise, did you accept the return, notwithstanding the fact that the claim was not justified? A. The answer is "yes" and "no." I mean, a particular—particular conditions that have bearing upon this particular return, all go into the making of a correct answer.

Q. In other words; then, when you said this morning that you accepted certain of these returns from the customer, rather than antagonize the customer, you meant that that testimony should apply to that particular transaction— A. It did.

Q. Please, let me finish—and was not the general custom of yours; is that so? A. It applied to the particular transaction, that case or situation.

Q. And as to claim of return, irrespective of whether or not you would antagonize the customer, if your examination of the facts brought you to the conclusion that you should not accept this return, you would not accept it? A. Correct.

Q. And that is your general practice and policy in your business? A. General practice and policy with reference—

Q. No; is that your general practice and policy in your business, Mr. Lifshy, to judge each case by its— A. Own merits.

Q. On its merits, as you say? A. Judge the case by the conditions surrounding it.

Q. And if the conditions surrounding it justify the acceptance of the return, you will accept it? A. Correct.

Q. And if the conditions surrounding the attempted return do not justify the return, you will not accept it? A. Correct.

Q. As a matter of fact, does not your house rather pride itself on its claim that it does not accept unjustified returns? A. We do.

Q. And has not your house from time to time made the statement that "Big customer or small customer," if an attempt to return is unjustified that you will not accept it? A. I don't remember making that statement.

Q. Well, is that the fact, whether or not you remember making the statement or not? A. No, our statement—

the statement we frequently make to the trade, and pride ourselves on; is that a customer who attempts unjustified returns to the Trussel Dress Company does not remain a customer on our books.

Q. What do you mean by "does not remain a customer on your books"? A. We refuse to sell them.

Q. You refuse to sell them? A. Yes.

Q. Have you refused to sell the Jones Store? A. The Jones Store?

Q. Yes. A. Have we refused to sell them?

Q. Yes. A. No.

2129 Q. Have you refused to sell John Wanamaker of Philadelphia? A. No.

Q. Have you refused to sell the Kaufmann Department Store? A. No.

Q. Then, I take it, that as to those returns you deemed that they were justified? A. I deemed——

Q. Is that not so? A. I deemed it advisable to take it.

Q. Did you not just say— A. I mean, justified from a business viewpoint, from my particular viewpoint, they were justified.

Q. I see. A. Whether they were justified in returning it, I don't agree.

Q. I see. Well, let us see whether they were or not. I show you Commission's Exhibit 331, the same being a letter from Kaufmann's Department Store, to you, to Trussel Dress Company—have you got the order by which the merchandise, which is the subject-matter of that communication, was ordered? A. No.

2130

Q. Do you know where it is? A. No.

Q. Do you keep your orders? A. For a period of sixty to ninety days, at the most, and then destroy it.

Q. And then they are destroyed? A. Yes.

Q. Do you know whether or not the order which calls for that merchandise had upon it the warranty stamp which reads as follows:—

Mr. Weisman: Will you give me your Commission's Exhibit 306?

A. I am acquainted with it.

Mr. Weisman: Well, I want to get the reading of it before me.

Examiner Bennett: It is in one of the records.

Mr. Weisman: Yes. I want to have the exhibit. You have it there, Mr. Seidman. I don't want to be accused of stating it incorrectly.

Mr. Seidman: I don't know where it is.

Mr. Weisman: 306, there it is right there.

May I have the question?

2132

(Question read.)

By Mr. Weisman.

Q. "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted." A. Yes. That order had it on.

Q. And when you received that order you knew the meaning of those words, did you not? A. I did.

Q. You understood, did you not, that by those words the seller reserved the right to return to you the merchandise in the event that the merchandise you shipped in purported or attempted compliance with the order was copy of Guild merchandise? A. I was aware—

2133

Q. No. Did you not know that? Do you want me to read the question again to you? Do you not understand the question? A. I don't.

(Question read.)

A. I knew that.

2134

Murray Lipshey—For Commission—Cross.

Q. Did you know that? A. That he took that right—

Q. Yes, you knew that. A. Yes, that he was not justified—

Mr. Weisman: Now, I ask that that be stricken out.

Mr. Haycraft: Oh, no.

Examiner Bennett: Well, if you want it—

Mr. Haycraft: I think, Mr. Examiner, he is entitled to explain.

Mr. Weisman: You know as well as I do that that is no answer. I asked him what he knew, not what somebody else was doing.

2135

Mr. Haycraft: Mr. Examiner—

Examiner Bennett: It may be stricken. You can bring it out on redirect, if you want.

Mr. Weisman: All right.

By Mr. Weisman.

Q. So, in other words, you knew when that order for merchandise was placed with you, that the purchaser of the merchandise would return the merchandise to you, if any of it was copies of Guild merchandise? A. Correct.

Mr. Haycraft: That is objected to, Mr. Examiner.

By Mr. Weisman.

2136

Q. Well, since you knew—

Mr. Haycraft: Mr. Examiner—

Examiner Bennett: Just a moment.

Mr. Haycraft: —I say that is objected to. In the first place, the question is whether or not—

Mr. Weisman: I think the Court overruled the objection.

Mr. Haycraft: Wait a moment.

Examiner Bennett: Just a moment.

Mr. Haycraft: He has not had time to overrule anything. I have not even finished my objection. I say that the question is faulty in that it puts in there the fact that they were copies, and not the claim of copies. You have to keep that distinction straight, Mr. Examiner, in this proceeding. As I say, it—

Mr. Weisman: Oh, no, I understand we have a stipulation—oh, I won't argue, I am sick of arguing with this gentleman on my right. The question was perfectly plain.

(Question read.)

By Mr. Weisman.

Q. I will reframe the question: So you knew that when this order was placed with you that the purchaser, by the terms of the order, was reserving the right to return any merchandise that you send in attempted compliance with this order, if that merchandise was copies of styles originated by members of the Fashion Originators Guild of America, Inc.—

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. —is that not so?

Mr. Haycraft: Wait a moment. That is objected to.

Mr. Weisman: All right.

Mr. Haycraft: There is a certain procedure that must be followed there, to wit, whether it was found to be or alleged to be, or something of that kind, copies of the merchandise—

2140

Murray Lifshy—For Commission—Cross.

Mr. Weisman: I do not know what my friend is talking about. I ask that my friend be confined to making an objection, visual in form, that I do not have to meet all of these extraneous speeches, which merely clutter up the record and serve no legal purpose.

Examiner Bennett: I will overrule the objection and let the witness answer if he can.

By Mr. Weisman.

Q. Will you answer that question, please? A. I knew that the buyer reserved the right to return merchandise which was supposed to be judged copies of Guild merchandise.

2141

Q. I see. So, when you got this letter from Kaufmann's Department Store advising that they were returning dresses, you knew that they were writing you in accordance with the terms of their order? A. In accordance with the terms of their order, yes.

Q. Now, I notice that this letter says—and this came from your customer, "We would appreciate you communicating with Mr. Jack Goldstone of the Fashion Originators Guild, 512 Seventh Avenue, New York City"— A. Correct.

Q. Did you communicate with Mr. Goldstone? A. I did not.

Q. You knew where he was? A. It is given in the letter.

2142

Q. You made no effort to communicate with him? A. None whatsoever.

Q. Well, did Mr. Goldstone talk with you about this? A. This particular return?

Q. Yes. A. I have no recollection.

Q. Did not you tell Mr. Goldstone that as to this particular return that the merchandise was a copy of Guild merchandise?

Mr. Haycraft: Objected to.

A. He did not—

Mr. Haycraft: Mr. Examiner, we are going into the same subject-matter. It is outside of the direct examination; it is irrelevant and immaterial, in view of the stipulation which I made.

Examiner Bennett: Yes. Objection sustained.

Mr. Weisman: Oh, I think that is so.

Examiner Bennett: Sustained.

By Mr. Weisman.

Q. Now, you also testified that with regard to that particular return you accepted the return; is that correct? 2144

A. Kaufmann's Department Store?

Q. Yes. A. I did.

Q. And you stated that you accepted the return because you did not want to antagonize the customer? A. Correct.

Q. Now, if you took this order with this warranty that the merchandise was not to be copies of Guild merchandise, and then you refused to accept the return of merchandise which was a copy of Guild merchandise, do you not think the customer would be justified if he felt that you had not kept your word to him?

Mr. Haycraft: Just a moment. That is objected to, Mr. Examiner. Same ground as the previous question. 2145

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In view of your promise in this order, do you not believe that Kaufmann's store was justified in returning it, only in view of your promise? A. No.

2146

Murray Lifshy—For Commission—Cross.

Q. Without regard to the— A. There was no promise—

Mr. Haycraft: Same objection.

Mr. Weisman: Let us see.

Mr. Haycraft: Same objection. It refers to the same matter.

By Mr. Weisman.

Q. This order says—

Mr. Haycraft: May I object?

By Mr. Weisman.

2147

Q. The order says—

Examiner Bennett: I am going to let him finish his question.

By Mr. Weisman.

Q. This order says as follows, the order for this merchandise: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by the members of the Fashion Originators Guild of America, Inc." Do you not understand that the word "warranty" is in the nature, or synonymous with the word "promise"?

Mr. Haycraft: Same objection.

2148

A. Yes.

By Mr. Weisman.

Q. And did you not understand that by placing an order which contained such warranty that you were promising, in words or substance, not to send any merchandise which was a copy of Guild merchandise? A. I took the order—

Mr. Haycraft: Objected to.
Examiner Bennett: Sustained.

By Mr. Weisman.

Q. Oh, I asked you whether or not—

Mr. Haycraft: I object.
Examiner Bennett: The objection is sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. What did you say about how substantial a customer Kaufmann's Department Store was? A. I estimate we did on an average of \$6,000 a year with them.

2150

Q. Were they a substantial customer? A. I did not say they were substantial customers.

Q. How? A. I did not say they were substantial customers:

Q. Well, were they that type of customer who, if they made unjustified returns, returns which were not well founded, you would have accepted them in view of what you have told us a few moments ago about the policy of your house? A. According to the return—the amount of the return—the activity of the account at that particular time, how long the dresses were in their possession, what type dresses they were, whether they entail a terrific loss, or slight loss, all those factors come in. It is hard to give a definite answer on—

2151

Q. After taking all of those factors into consideration, you decided with regard to Kaufmann's Department Store, the proper thing to do was to accept the return? A. Correct.

Q. Now, with regard to Commission's Exhibit No. 332, referring to a return by the Jones Store, of Kansas City, Mo., that order also had on it, when it was placed with you, the warranty stamp? A. It did.

2152

Murray Lifshay—For Commission—Cross.

Q. And as to that order, you knew that you were, by the acceptance thereof, agreeing, in words or substance, that if any of the merchandise shipped pursuant to the order was copies of Guild merchandise, the purchaser retained the right to return it to you; did you not? A. I did.

Q. And I remember that you testified on your direct examination that you refused to return that merchandise—

A. (Interposing) Except—

Q. —except the return; is that not so? A. I did.

Q. As a matter of fact, by Commission's Exhibit No. 333, you gave the reasons for your refusal to accept the return of that merchandise? A. I did.

2153

Q. And, as a matter of fact, was not the reason that you gave, the fact that the claimed return was being made too late? A. One of them.

Q. Now, when you accepted these orders with this Guild stamp on them, did you not understand that by the acceptance thereof, you were agreeing to abide by the terms of the stamp? A. No, I did not.

Q. You did not? A. No.

Q. You are absolutely certain about that? A. Absolutely certain.

2154

Q. So that when you wrote your customer the following, you were untruthful, "Although we concede the fact that you, as a member of the Guild, had the Guild stamp on your order, and that we, in turn, upon accepting the same, obligated ourselves to abide by the terms"—that was untruthful? A. No, it was not.

Q. Did you not just say that when you accepted the order, that you did not agree to abide by the terms— A. When I—

Q. Wait a moment. And does not this letter written to your customer on October 30, 1935, state that you understood by the acceptance of the order you were agreeing to abide by the terms? A. That letter that you are showing there, it was not my desire to tell a customer everything I knew. We had been advised—

Q. No, no, I am not talking about telling——

Examiner Bennett: He may explain, he may explain. You are trying to show he was untruthful, and the witness is permitted to——

A. We had been advised ——

Examiner Bennett: He can make a full explanation of his attitude upon this.

The Witness: We had been advised by counsel who were retained by our \$4.75 Group with reference to this Guild question, that legally we were not obligated to accept returns made on that warranty stamp: To get into a legal communication and discussion with my account was not my intention or desire. I felt that it would be diplomatic in that particular letter to concede that although he had a right to return that he could not abuse that right by keeping my merchandise 10 weeks and figuring that the Guild warranty stamp gave him that privilege.

2156

By Mr. Weisman.

Q. When you wrote to the Jones Store the following, "Although we concede the fact that you as a member of the Guild had the Guild stamp on your order, and that we in turn upon accepting same obligated ourselves to abide by its terms, you must also consider the fact that our invoice states that all claims or returns must be made within a period of 5 days after the receipt of goods, and your acceptance of this invoice constitutes your agreement to abide by the terms as stated." You, in truth and in fact, did not, when you accepted the order with the Guild stamp on it, feel obligated to abide by its terms but had a mental reservation with regard thereto——

2157

Mr. Haycraft: I object.

2158

*Murray Lipshey—For Commission—Cross.**By Mr. Weisman.*

Q. Is that so or is it not so? A. Are you referring to this—

Mr. Haycraft: I object to the question as irrelevant and immaterial.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

2159

By Mr. Weisman.

Q. Now, as a matter of fact, I understood you to say that although you accepted this order with this stamp on it, and told your customers, as evidenced by Commission's Exhibit 333, that where you accepted an order with a stamp on it you would abide by it, that you did not intend to abide by it; is that so?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

2160

Q. I understood you, in answer to a prior question, to say that prior to your acceptance of this order you had obtained legal advice with regard to this particular warranty; is that correct? A. Correct.

Q. Was that written advice that you got or oral? A. Oral.

Q. Where did you get that advice? A. From our attorney, retained by a group of \$4.75 Dress Manufacturers.

Q. Well, where did the attorney deliver that opinion to you?

Mr. Haycraft: That is objected to as irrelevant and immaterial.

Mr. Weisman: I think I can probe this question. He has given it as a reason. I do not have to accept it, if I do not believe it.

Examiner Bennett: All right. Go ahead. Over-ruled.

A. At a meeting of this group, I believe—I personally did not attend this particular meeting, the meeting was attended by Mr. Trussel, who, in turn, relayed the message to me—

By Mr. Weisman.

2162

Q. Where was this meeting held? A. I think at the Popular Priced Dress Group.

Q. Oh, the Trussel Dress Company is also a member of this Popular Priced Dress Manufacturers Association, Inc.? A. We are.

Q. Are you any officer of that Association? A. I am sorry to say, no.

Q. Was this true, in Commission's Exhibit No. 333, you said, "It is our personal feeling that retailers are taking advantage of the Guild's regulation to clean up leftover stock and we do not intend to become a party to such practice." A. That was my feeling at that time.

Q. Well, suppose this customer had not wanted ten weeks, as it appears from the letter he did, but had promptly tendered the return, would you then have accepted the return? A. The return in question?

2163

Q. Yes. A. Happens to be two dresses.

Q. Yes. A. \$9.50. In all probability if the customer had returned it within a period of five days the return may have been accepted.

Q. In other words, you felt that this was an unjustifiable return? A. I felt that the reason was an unjustifiable reason.

2164

Murray Lipshey—For Commission—Cross.

Q. And he had waited too long, had he not? A. He would not have waited that long if he did not have that reason to fall back on.

Q. Do you remember the code of fair competition for the dress industry? A. I do.

Q. Under the code of fair competition for the dress industry was a return attempted to be made 10 weeks after the delivery considered an unfair trade practice? A. Absolutely.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

2165

Mr. Weisman: No, no, it is very material, on the question of whether or not the returns increased in number after the N. R. A. ceased to be the law of the land.

Examiner Bennett: I sustain the objection.

Mr. Weisman: Exception.

Examiner Bennett: I think we are not going into whether it was a fair trade practice for a body that is not now—

By Mr. Weisman.

Q. When you sent this letter, Commission's Exhibit No. 332, to the Jones Store, by giving them all of these reasons that you have set forth therein, did you not intend to convey to them the idea that if they had made seasonable and prompt return, you would have accepted it?

2166

Mr. Haycraft: That is objected to.

A. I think the letter speaks for itself.

Mr. Haycraft: The letter speaks for itself.

Examiner Bennett: Sustained. I think we have been over this as much as necessary.

By Mr. Weisman.

Q. How often have you been a witness in court? A. I think—

Mr. Haycraft: Objected to.

A. This is my second time.

By Mr. Weisman.

Q. Where have you learned that exhibits speak for themselves? A. I have heard it here so often, I am an apt follower.

Q. Well, now, with regard to Commission's Exhibit No. 334, did the order of which these dresses was a part, contain the warranty stamp? A. It did.

2168

Q. So that when you accepted the order for the merchandise herein referred to, you clearly knew that according to the terms of the order you had promised not to send in fulfilment thereof any copies of Guild merchandise; is that not so? A. Yes.

Q. Did you intend to keep that, when you made it?

Mr. Haycraft: I object.

A. Well, I made it a practice—

Q. No, no, no—

Mr. Haycraft: I object.

Examiner Bennett: Go ahead.

2169

Mr. Weisman: It is a simple question.

Mr. Haycraft: It is objected to.

Examiner Bennett: Go ahead.

By Mr. Weisman.

Q. Did you intend to keep that promise when you made it? A. Yes, I did.

Q. Did you? Well, let us see.

2170

Murray Lifshy—For Commission—Cross.

Mr. Haycraft: I move to strike the answer, Mr. Examiner, in order to keep my record clear on this, because now we have the question in, the answer is in, and the question of whether or not it is a copy, whether he did carry out his promise, and all that, would bring in this other issue.

Examiner Bennett: Did he intend to carry out his promise.

Mr. Weisman: I asked him if he intended to keep his promise and he said he did.

Examiner Bennett: Yes.

2171

By Mr. Weisman.

Q. Let us see, did you intend to keep your promise that you made with regard to the order that you took from the Jones Store?

Mr. Haycraft: Same objection.

Examiner Bennett: Well, I think that has been asked.

Mr. Weisman: Oh, I did not ask him that question at all.

Examiner Bennett: Go ahead and ask it.

By Mr. Weisman.

Q. Did you— A. I did with reservations.

2172

Q. Oh, you did with reservations. When you said in answer to the question of whether or not you intended to keep your promise in connection with the Wanamaker Stores, and you answered me yes, you meant yes with a reservation? A. Without reservation in that particular case.

Q. In this particular case, without reservation. Well, why were there reservations with regard to the Jones Company—I will withdraw that. Did you tell the Jones Store about these reservations?

Mr. Haycraft: I object.

A. No.

Q. Those were reservations you kept secret in your own mind as far as the Jones Store was concerned?

Mr. Haycraft: Same objection.

A. There were no reservations—

Mr. Haycraft: Just a moment, now—same objection.

Examiner Bennett: I am going to let it in for the purpose I spoke of; overruled.

By Mr. Weisman.

Q. Now, with regard to the Wanamaker order, you had no reservations? A. Absolutely.

Q. Well, at the time that you received the Wanamaker order, did you have the legal advice you told us about in connection with the Jones Store order?

Mr. Haycraft: Same objection.

A. I did.

Q. And notwithstanding the fact that you had the same legal advice with regard to the Wanamaker order, you did not have any reservations but intended to keep your promise? A. I did.

Mr. Haycraft: Same objection, your Honor.

Examiner Bennett: Same ruling.

By Mr. Weisman.

Q. Did you accept the return? A. From Wanamaker?

Q. Yes. A. I did.

Q. Did you accept the returns so that you might keep your promise? A. I accepted the return because it was John Wanamaker of Philadelphia.

2176

Murray Lipshey—Fox Commission—Cross.

Q. Oh, I see. What was there about John Wanamaker of Philadelphia which made you accept the return from them? A. One of the cleanest—

Q. And not from the Jones Store of Kansas City, Mo. A. They happen to be one of the cleanest accounts we have on the books, and I knew for a fact that no intention or desire on the part of that store to return unjustified—to make unjustified returns, and that in this particular case he was forced to return the merchandise, and I took them back because of her standing on my particular records.

Q. And that is the sole reason? A. Absolutely.

2177 Q. You did not regard the promise that you had made as any reason for the acceptance of the return, did you? A. I never placed too much worth in the whole stamp, on this order.

Q. You mean you never placed too much work upon your own promises made in the course of your million dollar business; is that it? A. It was a promise—

Q. No, no. A. —forced—

Q. No, is that it? A. —by duress.

Q. You heard that before?— A. I did not hear that.

Q. —by a lot of witnesses, and Mr. Ballon told you— A. Mr. Ballon did not tell me.

Q. —your lawyer, subject— A. —anything.

Q. What do you know about duress, if lawyers did not tell it to you? A. It is a common enough word.

2178 Q. Is it? A. I happen to read the papers once in a while.

Q. Let us see.

Mr. Weisman: May we have the last question before the colloquy?

(Last question read.)

Mr. Weisman: I withdraw that.

By Mr. Weisman.

Q. Did not you feel a moral obligation to keep the promise that you made to John Wanamaker's? A. No, I take it you are referring to the Guild stamp?

Q. Yes. A. My answer is still no.

(There was a discussion off the record.)

Q. Did you not testify this morning in answer to Mr. Haycraft's question that the reason that you accepted the return of the copies from Wanamaker's was that Wanamaker's was an excellent account? A. Yes, I just explained that—

Q. In other words, the fact of the excellency or lack of excellency, in the account, rather, than the fact of your promise, was the inducing reason as to whether or not you would comply with a promise? A. Correct.

2130

Q. By the way, with regard to the John Wanamaker order, where did you receive that order? A. In my showroom.

Q. Where is your showroom? A. 501 Seventh Avenue.

Q. Who placed that order with you? A. Miss Cosgrove.

Q. Where did you get the Kaufmann order? A. I really don't recall.

Q. Would you say you got that in your showroom? A. I don't know.

Q. Who does the buying for the Kaufmann Store? A. Peggy O'Neil.

2181

Q. Peggy O'Neil comes to New York, does she not? A. Yes.

Q. And Peggy does her buying in New York? A. Right.

Q. And this order was placed by Miss Peggy O'Neil in your showroom? A. I don't know.

Q. Who does the Jones Store buying, who is that buying done through? A. William T. Knott.

Q. That is a New York buying office? A. Yes.

2182

Murray Lipshey—For Commission—Cross.

Q. Did you receive that order in New York City? A. Right:

Q. Now, with regard to Commission's Exhibit No. 335, I call your attention to the second paragraph thereof, wherein the Guild says: "Inasmuch as this decision was rendered out of town, the Guild office did not participate in the usual manner. We are, however, bound to accept this decision. Should you be dissatisfied with the judgment of this committee and desire a rehearing here in New York, kindly advise the writer at once." Signed, "Fashion Originators' Guild of America, Inc." Did you notify the writer at once? A. I did not.

2183

Q. Did you do anything about it? A. No, sir.

Q. Did you communicate with the Guild office on receipt of this letter? A. I did not.

Q. Did you know the purpose of this letter? A. The purpose of this letter?

Q. Yes. A. Telling me I was getting a return of seven dresses.

Q. And telling you that the Guild had not participated in the adjudication of the copy; is that not so? A. Well, it says there, out of town—I don't know their setup—but it comes from the Guild.

Q. Don't you understand that, what that means? A. The decision was rendered out of town.

Q. Yes. A. How do I know, the Guild out of town, or in New York.

2184

Q. And it says, "If you should be dissatisfied with the judgment of the committee and desire a rehearing kindly advise the writer at once." A. And if I did, so what?

Q. Not "so what," did you? A. I did not; it was useless.

Q. It was useless, because the dress— A. The merchandise was on its way back to me.

Q. How did you know that? A. Because I got—at the same time I got that I got a letter from Joseph Horne,

or a slip from Joseph Horne, telling me that seven dresses were being returned, so what am I going to do? Ask them to take it back and pay expressage and everything?

Q. Have you got that slip with you? A. I have not. This letter came after that slip.

Examiner Bennett: It is recess time. I will give you 5 minutes.

(There was a short recess taken.)

Examiner Bennett: Gentlemen, we will be in order, please. Will you come around?

The Witness: Yes, sir.

By Mr. Weisman.

2186

Q. Have you got that slip with you? A. I have not. This letter came after that slip, as I said before.

Q. In answer to Mr.—I withdraw that. Aside from that returns that you have testified to, as evidenced by or as referred to in Exhibits 331 to and including 335, inclusive, I understood you to say that you received some other returns? A. I did.

Q. Now, as to these other returns, were they on orders which had the Guild stamp on them when the order was placed with you? A. A great majority were.

Q. Well, now, let us first confine ourselves to the small minority, since you have divided them into a "great majority" and I assume the others were the "small minority"; is that right? A. Are you speaking about returns attributed to the Guild? 2187

Q. Yes. A. Now, your question is what?

Q. My question is: As to the other returns that you got which were attributed to the fact that the merchandise was copies of Guild merchandise ordered, whether the orders which were originally placed for that merchandise; whether such orders had on them the Guild stamp? A. Every instance in which the return was made because of the Guild the original order had the Guild stamp on it.

Q. What did you mean before when you said only a small minority? A. I thought you referred to the percentage of returns on orders that consisted entirely of orders with the Guild stamp.

Q. I am afraid I do not understand that answer. As to these orders, when you got these returns you accepted them; did you not? A. Yes, sir.

Q. Now, you have testified that it is the policy of your house not to accept any unjustified returns; have you not? A. The policy of our house is to cut out accounts that make unjustified returns.

Q. You accepted these returns? A. Yes, sir.

2189 Q. Did you cut these houses out? A. Some, we did.

Q. Give me the name of one house that you cut out because of Guild stamp being on their order? A. Because of their returns I thought you referred to.

Q. All right, because of their return pursuant to the Guild stamp on their order. A. The Mirror.

Q. Where? A. Atlanta, Ga.

Q. The Mirror of Atlanta, Ga.? A. The Mirror of Atlanta, Ga.

Q. Give us the details of that? A. Their orders were placed with Guild stamps. Their returns were entirely out of proportion and unjustified, we felt, and we cut that account and refused to take orders from them.

Q. Now, let us see. A. Yes.

2190 Q. Did you refuse to take orders from them because you felt their returns were beyond what the Guild stamp entitled them to do? A. We refused to take their orders because their returns were out of proportion to their shipments, and the Guild stamp was one of the many reasons that they have availed themselves of to make returns.

Q. What were the other reasons that were availed of plus the Guild stamp? A. I do not remember.

Q. You do not recall the other reasons that they availed themselves of? A. I do not remember.

Q. They made unjustified claims that the merchandise was faulty? A. I do not know. They may have had. They may have had some claims that were justified and some claims that were unjustified, but putting the both of them together we had a percentage above the proper amount of business that we did with them. It may be a part of the returns were justified, but we felt the greater part of them were unjustified.

Q. You refused to do business with them because they were making unjustified returns? A. Yes, sir.

Q. In other words, where a customer of yours makes a return to you which is justified, you do not refuse to do business with them; is that not so? A. If a customer— will you make that a little clearer?

Q. I mean, if the customer gives you an order and you do not fill it properly in accordance with the order, and he thereupon returns the merchandise, that is a perfectly proper thing for him to do? A. Absolutely justifiable, yes.

Q. You do not refuse to do business with him? A. No.

Q. No? A. No.

Q. With regard to the Mirror of Atlanta, Ga., you have testified that he had such a large percentage of unjustified returns that you preferred not to continue to do business with him? A. Yes.

Q. And you also said that the reasons he gave were reasons in addition to those that the merchandise was copies of Guild merchandise? A. Yes.

Q. Then for those reasons you refused to do business with him because he caused you—he made returns of copies of Guild merchandise, but he made a lot of other returns for other reasons which were unjustified; is that so? A. The reasons—

Q. (Interposing) Is that not so? Answer that question first, please. A. Just a moment. Allow me to answer the question—

2194

Murray Lifshay—For Commission—Cross.

Q. (Interposing) The answer is either one way or the other. It is either "yes" or "no."

Mr. Haycraft: I object. I insist that the witness be allowed to answer the question. It is not a question which may be answered "yes" or "no." He is entitled to give an answer that is proper to such a question.

Examiner Bennett: The witness may answer with such explanation as he desires, and we will hear what it is.

The Witness: You cannot answer "yes" or "no" on a statement covering as broad a subject as you were trying to cover here. The Guild reason was always the reason that he had as a last resort. There had to be some reason for the return.

2195

By Mr. Weisman.

Q. Now, wait a minute. You said to me that, and only in less than 5 minutes ago—that the reason that you refused to do business with the Mirror of Atlanta, Ga., was that this company made returns to you for Guild reasons and for numerous other reasons; right? A. Correct.

Q. You also stated to me that these other reasons in the majority were unjustified; did you not? A. These other reasons in some majority were unjustified?

Q. Yes. A. No. I did not state that.

2196

Q. Do you now state that the reasons that he gave you were justifiable reasons for the return of the merchandise? A. I stated—

Q. (Interposing) One moment. One moment. What I want to know from you is this: You said—now listen to me very carefully, I will try to get finished with you so you can go on your vacation without any delay if you will just co-operate with me—that the Mirror Store of Atlanta, Ga., returned merchandise to you for the reason that the

merchandise was copies of Guild merchandise; and you, also, used the words "for numerous other reasons"; is that so? A. Right.

Q. You further said to me that among these numerous other reasons some of them were unjustified; do you remember that? A. Yes, sir.

Q. You also told me that if the merchant returned the merchandise to you for justifiable reasons that was perfectly all right. A. Yes.

Q. We have agreed on those things. Now, I say to you that if that is so, is it not a fact that the reason you have stated that you have ceased doing business with the Mirror of Atlanta, Ga., is that the Mirror made numerous unjustifiable returns? A. Correct.

2198

Q. And that was an unethical practice? A. Correct.

Q. You felt that they were an unethical dealer? A. Yes.

Q. As such unethical dealer, you did not want to continue to do business with them? A. Yes.

Q. Do you remember the first question that I asked you when you gave me the answer of the Mirror of Atlanta, Ga.? A. You told me to name an account that we shut out and stopped doing business with because of unjustified returns.

Q. No. I think you must have been mistaken. I asked you to give me the name of one account that you had stopped doing business with because of the Guild stamp. That is what I asked you. That is why I had to ask you so many questions about the Mirror of Atlanta, Ga. A. In this particular instance because of the Guild stamp is not the direct cause—I see.

2199

Q. You see.

Mr. Haycraft: Do not interrupt the witness. Permit him to finish his answer.

By Mr. Weisman.

Q. Have you finished your answer? A. No.

Q. Please do so. A. Because of the Guild was not the direct cause of dropping that particular account. However, I will state that there may not have been any reason for me to drop that particular account if that man did not have the Guild stamp to fall back upon as reasons for his return.

Q. Did you not just testify that he was an unethical dealer? A. No, I did not—I said that some of his reasons may have been justified. Some of his reasons may not have been justified, and some of them may have, but putting
2201 them both together they got to be a certain proportion above the ratio that was proper for the amount of goods that we shipped to him.

Q. I think the record will show what the witness testified to and I will stand on that, and I will not spend any more time in regard to this matter. Aside from the Mirror—by the way, orders from the Mirror contained this stamp, did they? A. Oh, yes.

Q. Who does the Mirror buy through? A. Through a New York buying office.

Q. You received that order in New York? A. Yes, sir.

Q. There is no question about that? A. Absolutely. We have nobody on the road. We get all of our orders that way.

Q. So that when you accepted this order, or the return
2202 of this order from the Guild—or, rather, from the Mirror, rather, you knew that you—when you got the order for—
A. I do not understand what you are trying to say.

Q. I will put it this way: When you accepted this order from the Mirror you knew that you were going to, and that you were then, in fact, giving them a promise not to ship any goods that were copies of Guild merchandise? A. I never did that at all.

Q. What is that? A. I did not make any promise.

Q. Did you not say before to me that you understood the words: "This order is placed upon the seller's warranty." That you understood the word "warranty" to be synonymous with promise or agreement. "That the above garments are not copies of styles originated by the Fashion Originators Guild, Inc."? You said with regard to John Wanamaker you understood that to be a promise, and you made the promise without any reservation. A. Yes, the latter part of—

Q. Without reservation? A. I took the order without reservations.

Q. And that with regard to the Jones Store, you understood it to be a promise, but you took it with reservations?

A. Yes.

Q. As to the Mirror, did you have any reservations when you took that order with that promise? A. I took that—

Q. (Interposing) No. Did you have any reservation? A. I am trying to tell you this, how can I tell you how I took that particular order when I cannot even tell you whether I took that order or whether it was dropped in the order bin by one of the other salesmen—I just cannot do it. Orders were accepted by us as a firm, realizing that we are a business house with a selling force on the floor. We all accept orders, even the shipping boy accepts orders at times.

Q. Do you pass on all orders before they are shipped?

A. I do the charging and the checking and pass on them at that time before they go out.

Q. You do not ship anybody who sends you an order, do you? A. No.

Q. The order has to be accepted and passed upon as to the terms, credit, and so forth? A. Yes, sir.

Q. The delivery date? A. Yes, sir.

2206

Murray Lipshey—For Commission—Cross.

Q. That is right. And so, before this order from the Mirror was accepted it had to be passed upon, and its terms had to be found acceptable to you, or you would not take it; is that so? A. Yes, sir.

Q. So, when you received that order, and when you saw that the terms were that you would not ship any copies of Guild originated merchandise, you had a reservation about that, did you? A. No, it got to the point where we accepted orders with the Guild stamp as just one of the evils of the industry that we have to contend with, and we had to take them, and that is all.

2207

Q. Did you understand when you took that order that the purchaser expected you to live up to it? A. We understood that we took the order that way or we could not get it.

Q. No. Did you understand when the purchaser had that promise on the order, he expected you to, as a responsible, ethical merchant taking the order on those conditions to live up to it? A. I understood it was to his advantage to expect that.

Q. As a matter of fact, the same thing was true of all these other orders concerning which your direct testimony had reference to? A. Correct.

Q. You were asked this morning about discussions you had with buyers. Do you remember that? A. I do.

2208

Q. Do you remember you were asked by the buyers—by Mr. Haycraft—you were asked what buyers you had these transactions and discussions with? A. I remember that.

Q. I believe you said that the only buyer you could remember was Miss Dean of Mr. A.M.A. A. I said the only buyer I am definite I spoke to about that particular matter was with Miss Dean of the A.M.A.

Q. With Miss Dean. Did she tell you that you could disregard that stamp? A. Miss Dean?

Q. No. Did she tell you that? A. That I could disregard the stamp?

Q. Yes. A. I never asked her.

Q. Did Miss Dean give you any orders that had placed on those orders that promise that we have just had reference to—you know what I refer to. A. Yes. There was that stamp on the orders that she gave to me.

Q. Did you ever tell Miss Dean that you did not intend to keep that promise? A. I did.

Q. Did Miss Dean ever say to you that you could not ship or that you could ship without regard to the promise?

A. No, sir.

Q. Which was it? A. What do you mean?

Q. Did Miss Dean ever say to you that you could ship without regard to the promise? A. No, sir.

Q. Did she tell you she expected you to keep the promise? A. Just a moment—

Q. Did she tell you that she expected you to keep the promise? A. She guided her buying accordingly.

Q. Did Miss Dean tell you that as to every order that she gave to you with the Guild stamp on it she expected you to live up to the Guild stamp? A. She did not.

Q. Did she tell you that you might disregard the Guild stamp? A. No.

Q. Did she tell you to—in any event, did she ever talk to you about the Guild stamp? A. On several occasions, yes.

Q. Tell us what Miss Dean did say to you about these stamps? A. Well, what do you want to know?

Q. First, on just what occasions did she talk to you about the stamp more than once? A. On these occasions that I have reference to.

Q. On these occasions, tell us what the first one was, and what did you say and what did she say. First, what did she say to you? A. I can remember a definite occasion right after Thanksgiving Day, right after Thanksgiving

of 1935. Miss Dean was in my showroom and was working with me on a promotion for the A.M.C. Group of stores. Certain numbers had been collected as being a fit part of that particular promotion. The order was to be given in large quantities, anywhere from 200 to 500 of a number, and they were, in turn, to be distributed to the various stores of the A.M.C. Group. At that particular time I recall very distinctly telling Miss Dean with reference to the Guild stamp that I could in nowise consider that binding as a return on merchandise that was cut definitely and specifically for her orders; that I was not and would not take the order for 1,000 dresses or more feeling they were ~~subject~~^{to} to return at the Guild's request.

2213

Q. What did you state?

Mr. Haycraft: Just a moment. Let him complete his answer. I ask that he be allowed to complete his answer.

Mr. Weisman: Stop interrupting me.

Mr. Haycraft: Mr. Examiner, I insist upon a ruling upon my objection. I insist upon the witness being allowed to answer the question.

Mr. Weisman: I insist upon you stop interrupting me.

By Examiner Bennett.

2214

Q. Had you completed your answer? A. No, sir. Miss Dean did not do certain—

Q. Go ahead and answer. A. Miss Dean did not do certain— To give the substance of my conversation to Miss Dean, I gave that. Her reply was to the effect that the Guild activities were pretty active in certain of her stores; that she would guide herself accordingly in ordering that number, and eliminate certain numbers from that particular store in estimating her quantity to be placed on the order, and that in certain other sections of the country

where Guild activities was not so great—well, I mean, where they were not coming around constantly checking stocks she would figure on certain numbers, and the order was written in accordance with that understanding between the two of us.

By Mr. Weisman.

Q. Did you understand by that that where Miss Dean placed the stamp on the order, she expected you to live up to it? A. No.

Q. Did you understand by that that Miss Dean expected you on those orders wherein the stamp was placed to live up to the promise contained in the stamp? A. No. I do not believe she did expect me to.

2216

Mr. Haycraft: I move to strike out the question and the answer. How can this witness tell whether Miss Dean did or did not.

Mr. Weisman: She told him so. He can understand English, I think.

Mr. Haycraft: Try to yourself.

Examiner Bennett: That will be enough. I will let it stand. Proceed.

By Mr. Weisman.

Q. If Miss Dean permitted you to take orders with this stamp on them and then disregard the stamp, you would not be hurt by the stamp, would you? A. On that particular order, no.

2217

Q. So that as to this particular matter that you have discussed on direct examination, and now on cross-examination, where Miss Dean permitted you to have the stamp on it and disregard it, no injury was done to you, was it? A: Yes, there was. Injury was done in the respect that certain numbers were absolutely disregarded when it came to the allotting of them, because they were supposed to be alleged copies of Guild numbers.

Q. You mean that where Miss Dean knew that you were carrying copies of Guild numbers, she did not give you an order for them? A. No. Where garment—where Miss Dean had the slightest doubt that the number might be construed as an alleged copy of a Guild number she did not want me, in that position, to cut 250 or 300 of that number on her own discretion. She would rather let the number go by the board rather than have placed the order that would entail heavy returns.

Q. Where is Miss Dean's office? A. 1440 Broadway.

Q. This conversation took place in New York? A. Yes.

Q. This order was given you in New York? A. Yes, sir.

2219

Q. You testified on direct examination as to the chain stores that you did business with as follows: Graysons. A. Yes.

Q. The buyer is Mr. Hykuchi? A. Yes.

Q. Mr. Hykuchi lives in New York? A. I do not know where he lives. I think he does.

Q. Come on, where does he live? A. New York.

Q. You know that just as well as I do, do you not? A. Yes.

Q. And the buying office of Graysons is where? A. 260 West Thirty-seventh Street.

Q. New York? A. Yes.

Q. Do you know Mr. Jerry Konheim of Graysons? A. Yes.

2220

Q. Graysons does all of its buying right in New York City? A. Yes.

Q. Such orders as you get from Graysons were given in New York City? A. Correct.

Q. And were, by you, delivered to the Graysons receiving depot in New York City? A. Right.

Q. Right? A. Right.

Q. With regard to Lerner's, where is the—first, who is the buyer for Lerner's? A. Miss Armstrong.

Q. Miss Armstrong. Where does she make her office?

A. New York.

Q. And you get your orders in New York from Lerner's?

A. We do.

Q. Lerner's have a pretty little trick about receiving merchandise, do they not? A. I do not know. I would not know.

Q. Do they not pick up their own merchandise? A. No.

Q. Are you sure about that? A. Absolutely. I wish they would.

Q. Do you not get a charge from Lerner's of 25 cents per garment for picking up their own? A. No. Twenty-five cents per garment?

Q. Well, you are lucky. A. Six per cent. of \$4.75.

Q. Robinsons. Where is Robinsons' office? A. Same place as Graysons.

Q. As a matter of fact, is Robinsons associated with Graysons? A. Well, it is a family connection there. I do not think that they are associated.

Q. They have their buying office in New York? A. Yes.

Q. You make your sales to them right in New York? A. Yes.

Q. You deliver your merchandise right in New York to them? A. Yes.

Q. Tell us about Zukors? A. Zukors have their office in New York.

Q. Where do you get your orders? A. The orders are placed in the showroom, or at their buying office. Merchandise is put aside from their order made up in accordance with their buyer. They have three buyers, each buyer, when you have his particular order ready, you call him and you call him on the telephone and that particular buyer comes down and distributes the merchandise to each individual store. The merchandise is packed, boxed, and shipped through the National Packing Office, New York City.

2224

Murray Lifshy—For Commission—Cross.

Q. Tell us what this National Packing Office, New York City, is. The Commission will be interested in knowing about that.

Mr. Haycraft: I object. That is not proper cross-examination of anything brought out on direct.

Mr. Weisman: No? It is, too. He brought out where he did business with them, and I have a right to show how he did business with them.

Mr. Haycraft: I object to that.

Examiner Bennett: What do you expect to show about the National Packing Office?

2225

Mr. Weisman: The National Packing Office is an office in New York wherein a number of the manufacturers deliver their merchandise to, and the National Packing Office then distributes them to various parts of the country. That is what he calls "common delivery." I want to show just how this is effected. I will get through with this in a question or two. I just want to show how the delivery is made in order to show how these operations are conducted, which goes to the weight and probative value of this witness' testimony.

By Mr. Weisman:

Q. In a nutshell, what is this National Packing Office
2226 and where is it?

Mr. Haycraft: I ask for a ruling.

Examiner Bennett: I will limit the relevance to that extent that Mr. Weisman has indicated he desires to indicate.

By Mr. Weisman:

Q. You make your delivery to them and they distribute the goods? A. They bulk it and ship it.

Q. Their place of business is where? A. I do not know.

Q. Twenty-eighth Street and Eighth Avenue? A. I do not know. We have never had occasion—at least I have never had occasion to look up their address.

Q. What about Adairs. Where is their office? A. Same place as Graysons and Robinsons.

Q. New York City? A. New York City.

Q. Who is the buyer for them? A. Artie Schwartz.

Q. He lives in New York? A. Yes.

Q. Yes? A. Yes.

Q. You know his home is here? A. I do.

Q. Does his buying here? A. Yes.

Q. Makes his home here? A. Yes.

Q. His order is given in your New York office? A. Yes.

2228

Q. It is taken there? A. Yes.

Q. From his New York office? A. Right.

Q. To his New York office? A. Right.

Q. Where do Rubensteins make their office? A. I do not have the correct address.

Q. Do you not know? A. Yes.

Q. And the buyer is in New York? A. Yes, sir.

Q. And the office is in New York? A. Yes, sir.

Q. And they come down into your showroom sometimes? A. Yes, sir.

Q. In New York? A. Yes, sir. The same thing is true of each of the chain stores.

Q. The same thing is true of all the chain stores that you testified about this morning? A. With the one exception of J. M. & M. H. Samuelson who distribute their merchandise into the manufacturers' places who in turn ship it direct to the stores through parcel post or express, as the case may be.

2229

Q. But J. M. & M. H. Samuelson are located in New York? A. Yes.

Q. Their buying office is in New York City? A. Yes.

2230

Murray Lifshy—For Commission—Cross.

Q. The order is given you in New York City? A. Yes, sir.

Q. Accepted by you in New York? A. Yes, sir.

Q. As part of your business do you consider it your duty to read the various trade publications?

Mr. Haycraft: I object as incompetent, immaterial, and irrelevant.

Examiner Bennett: What is the question?

(Question read.)

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2231

By Mr. Weisman.

Q. In connection with the exercise by you of your functions as a sort of general factotum for the Trussel Dress Company, do you make it a practice to read "Women's Wear Daily," the leading publication in this field?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Weisman.

2232

Q. You stated on your direct examination that you first heard of the Guild, and I refer to the Fashion Originators Guild of America, Inc., one of the respondents in this proceeding, in the latter part of 1935? A. Yes.

Q. Is that so? A. Right.

Q. Is that correct? Do you want this Court to believe that is the first time you heard of the Guild? A. I believe around September, 1935. That is about the first time I can place my knowledge of the Guild.

Q. Do you know the Guild was organized in 1932? A. No.

Q. Did it ever come to your attention before that that it was in existence? A. It may have, but it was not of enough importance to make any real impression upon me, so I could not definitely say "yes" or "no."

Q. Were you correct in your statement this morning that the first time you heard of the Guild was in 1935? Did you not really hear of the Guild before that?

Mr. Haycraft: He has answered that three times. I object.

Mr. Weisman: We can have less trouble by having him answer it "yes" or "no" than going through all this squabbling.

Examiner Bennett: If you make your objection 2234 I will sustain it. He has answered.

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. That is all.

Mr. Haycraft: Let the record show that the re-direct examination will take place at another time. I understand the witness is going out of town for three weeks. I am not going to call him tomorrow but I will ask him to kindly remain subject to subpoena and come in here later.

The Witness: Any time three weeks after tomorrow.

(Witness excused.)

Mr. Haycraft: I have no further witnesses to 2235 present this afternoon, your Honor.

Examiner Bennett: At the request of attorneys for respondent, we will adjourn. This hearing is adjourned to reconvene at 10 o'clock tomorrow morning. Please be here promptly, gentlemen, so we can get a prompt start. That is all.

(Whereupon, at 4 o'clock P. M., July 23, 1936, the hearing in the above-entitled matter was adjourned.)

2236

Godfrey H. Conze—For Commission—Direct.

Room 901, 45 Broadway, New York, N. Y.,

July 24, 1936.

Met, pursuant to adjournment; 9 A. M.

Before: JOHN W. BENNETT, *Examiner.*

(Same Appearances:)

PROCEEDINGS:

2237

Examiner Bennett: Be in order, please. You may proceed.

Mr. Haycraft: I will ask Mr. Conze to take the stand at this time.

GODFREY H. CONZE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination.

Mr. Duryee: I wish to note my appearance as Mr. Conze's counsel.

2238

By Mr. Haycraft.

Q. You have stated your full name, Mr. Conze? A. Godfrey Henry Conze.

Q. Where do you live, Mr. Conze? A. Greenwich, Connecticut.

Q. What is your occupation? A. Vice-president of Susquehanna Silk Mills.

Q. How long have you been vice-president of the Susquehanna Silk Mills? A. Since 1927, but in the meantime the company was for four years in receivership, on 77-B.

Q. When did it come out of receivership? A. March 18.

Q. This year? A. Yes.

Q. What did you do with respect to the organization during the time of the receivership? A. The same duties which I had before the receivership, acting in a managerial, executive capacity.

Q. In what business was the Susquehanna Silk Mills? A. Manufacturing, converting, and distributing silk, rayon, piece goods, and mixtures of silk, rayon, wool, and other textiles.

Q. Does it have a factory? A. Including its subsidiary, approximately twelve factories.

Q. Located where? A. States of Pennsylvania, Ohio, Georgia, and New Jersey.

2240

Q. To whom do they sell their products? A. To manufacturers, retailers, and jobbers.

Q. Do you sell any of the fabrics manufactured by the Susquehanna Silk Mills to manufacturers of ladies' and misses' dresses? A. Yes.

Q. Have you done that during the past five years? A. Yes.

Q. To what particular manufacturer do you sell—do you sell to all manufacturers, or do you have a restricted group of customers? A. No restriction.

Q. Where, generally, are your customers who are engaged in the manufacture of ladies' and misses' dresses located? A. New York.

Q. Anywhere else? A. Some Chicago, some Los Angeles, but by far the majority in New York.

2241

Q. Any in Boston? A. Some in Boston, some in Philadelphia, some in St. Louis.

Q. What percentage of your customers that are engaged in the manufacturing of ladies' and misses' dresses would you say are located in the Metropolitan Area, that is, in and around New York City? A. I would not be able to answer in percentage or number, but in volume it is over 60 per cent.

2242

Godfrey H. Conze—For Commission—Direct.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. To some extent.

Q. You know that there is such an organization? A. That's it.

Q. Was the Susquehanna Silk Mills ever a member of the Textile Merchants Group of the Fashion Originators Guild of America, Inc.? A. The Susquehanna joined the Textile Affiliates in April, '35.

Q. In 1935? A. Yes, 1935.

Q. Is it still a member of that organization? A. No, resigned in April, '36.

2243

Q. Did you have anything to do with the joining of the Textile Merchants Group, the Guild? A. I personally did not—no, no.

Q. Did you represent your company on the Board of Governors of the Textile Merchants Group of the Fashion Originators Guild of America, Inc.?

Mr. Duryee: I object to that as calling for a conclusion.

A. In my opinion—

Examiner Bennett: Overruled.

Mr. Duryee: Just a moment.

Examiner Bennett: You may answer.

2244

A. In my opinion there never was a Board of Governors; there was a steering committee.

By Mr. Haycraft.

Q. A steering committee. Did you represent your firm on that steering committee? A. I was asked personally to serve on the steering committee by the executive secretary, Mr. De Lisser, in October, '35.

Q. How long did you serve in that capacity? A. Approximately 4½ months.

Q. Then what happened? A. I resigned.

Q. Would you give the date of your resignation? A. I have not got the date ready, but it was the end of February, the end of February, '36.

Q. Well, can you tell us why the Susquehanna Silk Mills became a member of the Textile Merchants Group, the Guild?

Mr. Weisman: Just a moment. I object to that on the ground it is incompetent, irrelevant, and immaterial. What operated in their minds we are not concerned with that. You have got the fact that they did become a member. You have got the further fact that they are no longer a member. I submit that is the complete fact which could be the subject of any inquiry here.

2246

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Why they became a member?

Mr. Haycraft: Yes.

Examiner Bennett: I will overrule the objection.

Mr. Weisman: I call your Honor's attention further to the fact——

Examiner Bennett: Go ahead.

Mr. Weisman: —that this witness has testified that he did not take part in the joining, and was not in any of the negotiations, etc. That was his earlier question. He was asked by Mr. Haycraft.

Examiner Bennett: Well, he can go ahead—but, of course, that is a matter of foundation, and I will ask the examining attorney to lay further foundation as to his knowledge.

2247

Mr. Haycraft: I did not understand.

Examiner Bennett: I say, I will ask the examining attorney to make further foundation as to the knowledge of this man as to the matter inquired of.

Mr. Haycraft: All right.

2248

Godfrey H. Conze—For Commission—Direct.

Examiner Bennett: There is an objection as to whether he knows.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. I will ask you what official position you were holding with the Susquehanna Silk Mills in March and April, 1935?

Mr. Weisman: Just a moment. I object. That has already been answered. He has testified he was vice president, and he further testified that up to the period of March, 1936, the company was in receivership, and that the company joined in April, 1935. It has already been answered.

Examiner Bennett: Well, I will ask him some questions, if you object to them, as an attorney—In your position as vice president, did you have knowledge of the considerations which caused you to join, or your concern to join the Textile Division of the Fashion Originators' Guild?

Mr. Weisman: May it please—

The Witness: Yes.

Mr. Weisman: May it please your Honor, I assume that you are asking that question on behalf of the Commission, not on my behalf?

2250

Examiner Bennett: I am asking it on behalf of the Commission.

Mr. Weisman: Then I—

Examiner Bennett: I certainly am.

Mr. Weisman: Yes.

Examiner Bennett: Then you are entitled to an objection.

Mr. Weisman: Yes.

Examiner Bennett: Which I overrule.

Mr. Weisman: Then if you are asking it on behalf of the Commission, I respectfully submit—

Examiner Bennett: Yes, that is all right. He has said he knows. Go ahead.

The Witness: I did.

By Mr. Haycraft.

Q. All right. What were the considerations? A. Most of my competitors——

Mr. Weisman: Just a moment. I object to the form of the question as being incompetent and immaterial.

Examiner Bennett: Overruled.

Mr. Weisman: And calling for a conclusion of the witness.

2252

Examiner Bennett: Overruled. You may answer.

A. Most of my competitors were members.

By Mr. Haycraft.

Q. Was that the principal or only consideration? A. Yes.

Q. Who solicited your membership?

Mr. Weisman: I object to the question as immaterial.

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception.

2253

A. I don't know.

By Mr. Haycraft.

Q. Why did the Susquehanna Silk Mills withdraw its membership?

2254

Godfrey H. Cenze—For Commission—Direct.

Mr. Weisman: I object to that as incompetent and immaterial why they withdrew; might have withdrawn for any—

Examiner Bennett: I am going to find out and see if it is competent or not.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

Mr. Duryee: Same objection.

Examiner Bennett: Overruled.

A. On the advice of counsel we withdrew; it was done on advice of counsel.

2255

Examiner Bennett: I see. All right.

Mr. Weisman: I ask that the answer be stricken out.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Do you have any objection to giving any further reason that was assigned by counsel for you withdrawing?

Mr. Weisman: I object to that as incompetent, irrelevant, and immaterial. Now we are going to have what some counsel advised, well advised or ill advised him, told him at some ex parte place. I submit that that is going beyond all realms of proper direct examination.

2256

Examiner Bennett: Yes. I will sustain the objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. At the time that you became a member of the steering committee, that you referred to a moment ago, who invited you to join that committee? A. Mr. De Lisser.

Q. Were any representations made to you at that time as to the functions that you would be called upon to perform as a member of that committee? A. I was told that the committee was an advisory committee, and would not take much of my time.

Q. When did you seek advice of counsel with respect to the further membership in the Textile Division of the Fashion Originators Guild of America?

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: When was that? When?

Mr. Haycraft: Yes.

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: Overruled.

2258

Mr. Weisman: It is part of the witness' defense, if anything, and not part of the Government's case.

Examiner Bennett: Overruled. He may answer.

A. I could not give an exact date, must have been in March.

By Mr. Haycraft.

Q. Had anything occurred—

Examiner Bennett: What year was that?

By Mr. Haycraft.

Q. —which led you to seek the advice of counsel?

2259

The Witness: 1936; March, 1936.

By Mr. Haycraft.

Q. Had anything occurred which led you to seek the advice of counsel; I mean occurred with respect to the Textile Division of the Guild?

Mr. Weisman: I object to that on the ground that it is incompetent, irrelevant, and immaterial, and not proper cross-examination.

2260

Godfrey H. Conze—For Commission—Direct.

Examiner Bennett: Sustained. I think you can argue your own law in this case. I do not see why you should bring in somebody else's opinion.

Mr. Haycraft: I beg your pardon?

Examiner Bennett: I say, I think you can argue your own law in this case. I do not see the object of this line.

Mr. Haycraft: I was not attempting to get any law. I would like to have the question read. Apparently the Examiner did not understand it.

(Question read.)

Examiner Bennett: Is that your question?

2261

Mr. Haycraft: That is my question.

Examiner Bennett: Yes. I did not get the question clearly. I will overrule the objection to that.

Mr. Weisman: Exception.

Q. (Question again read.) A. I heard of the intentions of several of my—

Mr. Weisman: Just a moment.

By Mr. Haycraft.

Q. Just a moment. That can be answered "yes" or "no," Mr. Conze. A. Yes.

Q. What happened? A. I heard that several of my competitors intended to resign.

2262 Q. When did you hear that?

Mr. Weisman: Oh, I object to that as immaterial, your Honor; I mean, I did not want to clutter up the record, but it seems to me that it must be perfectly apparent to the Court besides that this is of no materiality.

Examiner Bennett: I sustain the objection. It was undoubtedly before he asked for the advice of counsel.

Mr. Haycraft: No further questions, and I ask the witness to step down, unless there is some cross-examination. I am taken by surprise.

Examiner Bennett: I beg your pardon?

Mr. Haycraft: Counsel is taken by surprise, and I ask that the witness step down.

Mr. Weisman: I ask that this be stricken off the record. Counsel has said he is finished with the witness.

Mr. Haycraft: Yes, I said that.

Mr. Weisman: All right. That is all. Thank you.

(Witness leaves the witness stand.)

Mr. Duryee: I would like to cross-examine.

Examiner Bennett: You would like to cross-examine?

Mr. Duryee: Yes.

Examiner Bennett: All right, you may return to the stand for cross-examination.

Cross-examination by Mr. Duryee.

Q. Mr. Conze, you testified that you were a member of the steering committee? A. Yes.

Q. Is that the only personal association which you had? A. Correct, it was.

Q. And you testified that you resigned from that in February? A. Latter part of February, '36.

Q. 1936. A. Yes.

Mr. Duryee: That is all.

Mr. Weisman: That is all.

(Witness excused.)

Mr. Haycraft: Mr. Examiner, I have been told that Mr. Lifshy wants to make a correction in some of his testimony of yesterday, and I want to give him an opportunity of doing so.

2266

Godfrey H. Conze—For Commission—Cross.

Examiner Bennett: Is he here?

Mr. Haycraft: Yes.

Mr. Weisman: Mr. Examiner, Mr. Lifshy told me yesterday—rather, requested me to curtail my examination so that he might leave this morning at 5 o'clock to go on a vacation. Believing that to be a fact, and relying thereon, I did curtail my examination. Believing further that to be a fact, I urged, and consented, that Mr. Haycraft's redirect be put off until some other time. Now, it appears when it suits the convenience of the witness he is here quite ready and willing, and I am a bit taken aback at his presence, and under those circumstances I ask that the redirect examination proceed with this witness and that I have the proper opportunity to examine him in the orderly and regular course.

2267

Mr. Ballou: Your Honor, may I say that Mr. Lifshy's appearance here this morning is prompted entirely at my request?

Mr. Weisman: I do not care at whose request it was prompted.

Mr. Ballou: Mr. Lifshy advised me yesterday afternoon that he had made a mistake in his testimony, a mistake that I thought was of sufficient importance to request that he come back here and make a correction. I, therefore, requested him to come down here this morning. It was entirely against his wishes, because, as he told Mr. Weisman, he had planned to leave on a three weeks' vacation at 5 o'clock this morning, which was true, and he has come back here solely at my request. Nothing he told Mr. Weisman is incorrect.

2268

Mr. Weisman: All right. I have no desire to interfere with his plans, but I desire to complete my examination.

Examiner Bennett: All right. Have him make his corrections first.

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